

**Desistance and restorative justice**  
**Mechanisms for desisting from crime within restorative justice**  
**practices**

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## Colophon

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## **Executive summary**

The project ‘Desistance and restorative justice. Mechanisms for desisting from crime within restorative justice practices’ focuses on the benefit offenders can get in a desistance perspective from participating in a restorative justice (RJ) process. The research was developed as a complement of an earlier study the European Forum for Restorative Justice coordinated on ‘Victims and restorative justice’ and as a response to an increasing interest of in particular policymakers in knowing what the effect of participation in restorative justice processes is on offending behaviour.

Recidivism research has looked into the link between RJ and reoffending. The results are not conclusive, but show that at least there is a potential for RJ to reduce crime. Recidivism research, with its mainly quantitative approach, does not, however, provide insight in why this influence occurs. Therefore this project has investigated 1) how participation in restorative justice processes influences the desistance journey of people who have offended, and 2) which factors within restorative justice practices support subjective and social changes that help initiate or maintain desistance from crime.

A qualitative approach was used in order to answer the research questions. We interviewed 90 desisters who had taken part in a restorative justice process. The interviews were conducted in in Austria, Belgium, and Northern Ireland. In Austria the juvenile and adult desisters had participated in victim-offender mediation which is organised as a pre-trial diversion measure for not so serious offences. In Belgium the adult desisters had participated in victim-offender mediation which runs parallel to the criminal justice procedure and involves (rather) serious offences. In Northern Ireland the juvenile desisters had participated in diversionary and court-ordered conferencing for offences of varying seriousness as part of the regular procedure.

The findings of the research confirm that victim-offender mediation and conferencing as practiced in Austria, Belgium and Northern Ireland have the potential to influence desistance; sometimes as a trigger for change, but more often as a support for an ongoing desistance process.

The research uncovered a number of recurring factors and dynamics. However, every desistance account was highly individual and therefore no generalisations should be made. In all three countries the work of the mediator created an atmosphere of openness and respect, and this set the right context for other effects to happen. Adopting a non-judgmental attitude,

showing a willingness to listen, and not labeling the participants as criminals was conducive to a constructive spirit and open communication in which participants felt comfortable to speak freely, to explain their whole story and to take responsibility. Although the flexibility of the restorative justice process differs in the three countries, it was clear that the possibility to tailor the process to the needs of the parties also helped to make it a useful experience for the desisting offender.

The communication with the victim was a dominant element in terms of impact on change. Facing the situation of the victim, experiencing the sometimes constructive attitude of the victim, the fact that the offender could explain things, apologise, express regrets and show changes in his life since the offence, these had all been helpful elements. The restorative justice process enabled the offenders to change their perspective, to develop empathy with the victim, or to acknowledge the real impact of their behaviour. After the restorative justice process the offenders had felt relieved, they had felt courageous and proud or it had helped them to turn the page.

In Northern Ireland in particular the rehabilitative elements in the reparation plans, which were prepared during the conference, were beneficial to many participants, especially to the juveniles who had been persistent offenders. Moreover, these young persons benefitted strongly from the relationship they were able to develop with the Youth Justice Agency worker who supervised the completion of their reparation plan, and from the ethos and humanising response they received from the Youth Justice Agency as a whole. Financial reparation as a result of a mediation, came to the fore as an element supporting desistance in a few Belgian narratives.

How were these factors helpful for desistance? Through these factors, the restorative justice processes helped desisters to deal with emotions of shame, blame, guilt and culpability. They instilled hope, provided an opportunity to find closure or to confirm the desister's pro-social identity. In specific situations the restorative justice process helped repairing relationships. Furthermore, it was seen as (very) helpful by the participants that the restorative justice process prevented a case to go to court, or that the restorative justice process supported a positive decision for an early release from prison.

Finally, the efficacy of victimless conferences and conferences with drug addicted offenders are areas which merit further attention, as our findings indicate that these situations may prevent restorative justice processes from influencing desistance.

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*Ivo Aertsen and Katrien Lauwaert*

## Table of content

<b>Chapter 1 - Introduction</b> .....	11
<b>Chapter 2 – On desistance</b> .....	15
2.1. Introduction .....	15
2.2. Defining desistance .....	16
2.3. Age and desistance .....	19
2.4. Desistance and the life course .....	22
2.5. Cognitive transformation.....	25
2.6. Narrative, identity and desistance .....	27
2.7. Young people and desistance .....	30
2.8. Conclusion.....	32
2.9. References .....	33
<b>Chapter 3 - Restorative justice and restorative justice practices</b> .....	38
3.1. Restorative justice and restorative justice practices .....	38
3.2. Restorative justice, recidivism and desistance .....	40
3.2.1. Reduction of reoffending as a goal for restorative justice programmes.....	40
3.2.2. Recidivism research.....	40
3.2.3. Theoretical frameworks .....	45
3.2.4. The link between restorative justice and desistance in practice .....	46
3.2.5. Research on offender motivations to participate in restorative justice.....	48
3.2.6. Research on offender satisfaction after participation in restorative justice.....	48
3.3. Conclusion.....	50
3.4. References .....	50

<b>Chapter 4 – Austria</b> .....	54
4.1. Victim-offender mediation in Austria.....	54
4.2. Relevant research on desistance and restorative justice.....	57
4.3. Empirical basis.....	58
4.3.1. Sampling procedure and sample characteristics.....	58
4.3.2. Data collection and evaluation.....	62
4.4. Findings.....	63
4.4.1. Desistance.....	63
4.4.1.a. The incident itself, the reaction to it, and its processing via VOM initiated change.....	64
4.4.1.b. RJ as support in an ongoing desistance process.....	65
4.4.1.c. Mediation not relevant for the desistance process.....	67
4.4.1.d. Summary of factors initiating/supporting desistance.....	67
4.4.2. Elements of change/ learning effects.....	68
4.4.3. Adequate management of escalated conflicts.....	71
4.4.4. No positive effects.....	72
4.5. Conclusion.....	73
4.6. References.....	74
4.7. Appendices.....	77
Appendix 1: Overview of the referral and processing of criminal cases in VOM in Austria.....	77
Appendix 2: Interview guidelines in German (Leitfaden).....	78
Appendix 3: Scheme of evaluation (Auswertungsschema).....	81
 <b>Chapter 5 – Belgium</b> .....	 85
5.1. Restorative mediation in the French speaking part of Belgium.....	85
5.2. Sampling and research procedure.....	91
5.3. Characteristics of the sample.....	94



5.4. Findings .....	98
5.4.1. Influence of the mediation on the desistance process? .....	98
A trigger for desistance.....	98
A support for desistance .....	99
No influence on desistance .....	100
5.4.2. Factors supporting desistance .....	101
5.4.2.1. Factors linked to the mediation experience .....	101
The attitude of the mediator .....	101
An open space for communication .....	104
The communication with the victim.....	105
Working with moral emotions.....	109
Reparation.....	110
Pro-social identity and self-perception.....	111
The mediation as an attempt to positively influence an upcoming judicial decision .	112
5.4.2.2. Other factors supporting desistance.....	112
5.5. Conclusion.....	114
5.6. References .....	116
5.7. Appendices.....	118
Appendix 1: Declaration of confidentiality concerning the use of the criminal record data .....	118
Appendix 2: Permission to consult penitentiary database SIDIS .....	121
Appendix 3: Filtering process of the first sweep of selected mediation cases .....	122
Appendix 4: Guidelines for the mediators who contact the potential participants.....	123
Appendix 5: Interview guidelines in French .....	127
Appendix 6: Interview guidelines in English .....	133
Appendix 7: Receipt for the gratification received by the participant after the interview .	139
Appendix 8: Informed consent form .....	140

<b>Chapter 6 – Northern Ireland</b> .....	142
6.1. Youth conferencing in Northern Ireland .....	142
6.2. Sampling and research procedure.....	147
6.3. Findings .....	148
6.3.1. Conferencing: desistance .....	153
6.3.2. Conferencing: learning effects.....	154
6.3.3. Conferencing: no positive effects .....	156
6.3.4. Reparation plans: desistance.....	158
6.3.5. Reparation plans: learning effects .....	160
6.3.6. Desistance: why and how .....	164
6.4. Conclusion.....	167
6.5. References .....	169
6.6. Appendices .....	171
Appendix 1: Request to participants.....	171
Appendix 2: Informed consent .....	172
Appendix 3: Interview questions (English) .....	174
Appendix 4: Interview questions (Irish).....	177
<b>Chapter 7 - Conclusions</b> .....	180
7.1. RJ is a potential trigger and/or a support for change.....	180
7.2. Factors supporting desistance.....	181
Creating an atmosphere of openness and respect .....	181
Tailoring the process to the needs of the parties .....	182
Communication with the victim .....	183
Reparation plans and the relation with the social worker who guides implementation of the reparation plan .....	183
Financial reparation .....	184

7.3. How were these factors helpful for desistance? .....	184
Dealing with emotions of shame, blame, guilt and culpability .....	184
Instilling hope .....	185
Finding closure .....	185
Confirming the desister's pro-social identity .....	185
Repairing relationships .....	185
Preventing a criminal record.....	186
Supporting a decision for a leave or a conditional release from prison .....	186
Enhancing the norm.....	187
7.4. What may work against RJ influencing desistance? .....	187
Victimless conferences .....	187
Drug addicted offenders .....	187
Persistent young offenders?.....	188
7.5. Final remarks.....	188

## Chapter 1 - Introduction

Katrien Lauwaert

This report results from activities undertaken in the framework of the European project entitled 'Desistance and restorative justice: Mechanisms for desisting from crime within restorative justice practices' (JUST/2011/JPEN/AG/2962) which was financially supported by the Criminal Justice Programme of the European Union. This two year project (2013-2014) was co-ordinated by the European Forum for Restorative Justice who worked in close collaboration with seven other organisations, representing research, practice and policy.

The research institutions involved were the Catholic University of Leuven (KU Leuven, Belgium), Queen's University Belfast (Northern Ireland) and the Institut für Rechts- und Kriminalsoziologie (IRKS, Vienna, Austria). Three field organisations continually ensured the relevance of the research for practice and helped the researchers in gaining access to the field: NEUSTART in Austria, the Youth Justice Agency of Northern Ireland and Médiante in the French speaking part of Belgium. All these organisations were part of the steering committee of the project together with the last partner, the Confederation of European Probation, who represented the offender perspective at the European level. The steering committee met four times over the project. The discussions were constructive and rich and providing a good basis for decisions on the direction the project should take. The collaboration of researchers and practitioners and the additional, broad perspective provided by the European ngos (EFRJ and CEP) was fruitful.

This is a study on the link between desistance and restorative justice (RJ). Through a literature review and empirical research an attempt is made to uncover factors in restorative justice processes which trigger or support desistance.

The interest for the effect of restorative justice processes on reoffending is not new. Especially policymakers have shown a keen interest in knowing whether RJ could be an effective tool for reducing recidivism, one of the most prominent goals of the criminal justice system. It is then no surprise that a large number of recidivism studies have been carried out in the past twenty years. The outcomes are not conclusive. Some studies show a positive effect of restorative justice processes on reoffending, others do not (without necessarily revealing a negative effect). Still other studies point towards effectiveness of RJ for certain

groups of offenders or offences. Overall it becomes sufficiently clear however, that restorative justice certainly possesses the potential to influence crime prevention positively. It remains nevertheless unclear why these positive effects occur. Through which mechanisms within restorative justice does this happen? Which factors or dynamics in restorative justice processes and outcomes play a role? For which groups and under which conditions are these factors or mechanisms effective?

The approach taken by most of the recidivism studies, with a focus on the quantitative link between the restorative justice intervention and reoffending rates, proves ill fit to provide such information. It seemed more fruitful to adopt the qualitative approach often used in desistance research, in which insight is gained about the process of stopping to offend through the narratives of the people who travelled this road. Put very simply, the idea is to learn from the successes of the people directly concerned, to learn what helped them. Using this strategy, desistance research has succeeded in pointing out a whole list of social and cognitive factors which play a role in desistance processes. While this gradual discovery related in the first place to natural desistance, this is the events happening in people's lives (marriage, employment, ...), a next phase in the desistance research has looked into the effect of judicial interventions on people's desistance path. Learning from desisters has been successfully applied in the field of reintegration or re-entry work (such as done by probation services). This study has the ambition, using a similar approach, to produce knowledge about what is helpful for (would be) desisters in restorative justice processes.

The study starts out with a literature review. In the chapter on desistance (chapter two) we explain the concept and we present useful results of existing desistance research. Then follows (in chapter three) a short introduction on restorative justice and the practices of victim-offender mediation and conferencing, and a concise overview of relevant existing research on the relationship between restorative justice and reoffending/desistance, be it quantitative, qualitative or theoretical.

The following three chapters (chapters four, five and six) report on the empirical work which was carried out. As pointed out above, we did not make an evaluative study of restorative justice practices. The aim was rather to learn from people who have stopped offending and who participated during this process in victim-offender mediation or conferencing, whether this has been helpful for their desistance process, and if so, in what way.

The specific research questions were the following:

- How does participation in restorative justice processes influence the desistance journey of people who have offended?
- Which factors within restorative justice practices support positive subjective and social changes that help initiate or maintain desistance from crime?
- For whom and under which conditions are these factors relevant?

Exploring the dynamics at work in a restorative justice process is the focus of the research, for which a qualitative, narrative approach was used.

In three countries in Europe - Austria, Belgium and Northern Ireland - we aimed to interview 30 desisters who participated in victim-offender mediation (VOM) or conferencing. In each country a research institute collaborated with a practice organisation in order to get access to potential participants. In Austria IRKS collaborated with mediation provider Neustart. In Belgium the KU Leuven Institute of Criminology joined forces with mediation service Médiante and in Northern Ireland, the researchers from Queen's university teamed up with the Youth Justice Agency. The people we were looking for were persons with a previous criminal lifestyle who had been crime free for at least one year. The specific sampling procedure used was tailored to the context and circumstances of each region.

The three participating countries were chosen because they had a well-developed and experienced restorative practice supported by legislation, but also because together they represented a diverse range of restorative justice practices. Selecting from these countries, we could involve in the research adult and juvenile offenders who took part in victim-offender mediation and conferencing, pre-and post-trial, as part of the regular judicial procedure or parallel to it, for minor and (very) serious offences. Indeed, Northern Ireland offers diversionary and court ordered conferencing to juveniles. The conference is part of the regular procedure and the agreement is normally the outcome of the case. In Austria, juvenile and adult offenders can be referred to victim-offender mediation, which takes place at the pre-trial or trial stage as a diversion measure for not so serious offences. In Belgium, restorative mediation takes place at the request of the adult parties and parallel to the criminal justice proceedings. In Belgium there are no limits as to the seriousness and the type of offences. If the parties decide to inform the judge of the outcome of the mediation, he can take that outcome into account in the further decision making.

Nonetheless the regional differences, it has been overall a difficult process to identify people with the right profile, who could be located and who agreed to be interviewed. In the end the

Austrian team interviewed 31 persons, the Belgian team 25 and the Northern Ireland team 24. The interviews started with an open question and then explored the interviewees past lifestyle, his/her experience of the restorative justice process, any changes in their lives afterwards and also a self-report of recent criminal behaviour. All interviews were registered, transcribed and analysed. The intermediary results of the empirical work were presented in regional workshops gathering practitioners, academics and policymakers in respectively Vienna, Belfast and Leuven, and at the 8<sup>th</sup> international conference of the European Forum for Restorative Justice held in Belfast, 11-14 June 2014. The results of the empirical research can be read in chapter four (Austria), chapter five (Belgium) and chapter six (Northern Ireland). Each chapter first maps the specific practice involved in the research and moves on to the presentation of the sampling and research procedure and the findings.

Chapter seven presents overall conclusions drawn from the empirical research in conjunction with the literature review.

## Chapter 2 – On desistance

Brendan Marsh

### 2.1. Introduction

Writing in 2004, Mulvey et al. bemoaned the dearth of research into desistance from serious adolescent offending and anti-social behaviour. A decade later the situation has improved somewhat, thanks mainly to some excellent research into youth desistance in the UK (see Barry, 2010; Murray, 2009). Nevertheless, it is true to say that the majority of desistance research has focused on adult offenders, and the main theoretical strands in the literature have been developed from work on adult desisting ex-offenders. To some extent, considering the necessity for a pattern of persistent offending over time, combined with the importance of the maturity process for desistance (Shapland et al., 2011), it is quite understandable that adult offenders have been the focus of much desistance research. However, research into desistance from crime usually delves into the life course of the individual and seeks to understand their development (or arrested development) through their adolescent years and into adulthood. Desistance research is therefore primarily the study of human development among a particular sub population, namely former persistent offenders who suffer from a public spoiled identity. Society labels and stigmatises those who deviate from the norm, particularly those whose actions or life patterns place them outside of conventional law abiding society (Braithwaite, 1989). By becoming involved in a deviant lifestyle individuals become stigmatised by mainstream society and it is therefore easier to remain embedded in deviant subcultures than to negotiate the obstacles they face if they try to enter conventional society. As Maruna and LeBel state:

*'Desisting from crime is a difficult process, especially for those who are deeply entrenched in criminal networks and living in disadvantaged circumstances. Successfully changing one's life in such circumstances requires a tremendous amount of self-belief, and this is made highly difficult, if not impossible, when those around a person believe the person will fail.'* (Maruna & LeBel, 2012: 68)

Furthermore, opportunities for leading a conventional life are reduced through decisions made earlier in life that break structural bonds such as relationships to family, friends, and community (Sampson & Laub, 1997). Criminal offenders often have very little positive social



capital as relationships are harmed and bridges burned through the harmful actions of the offender. The individual has effectively ‘knifed off’ healthy and prosocial aspects of their lives, and this dearth of social capital is an immense obstacle for those attempting to desist from crime (McNeill & Weaver, 2010). Desistance from crime, by its nature, requires change in many aspects of the individuals’ life. Research tells us that there can be many social, structural, and subjective changes, including employment and intimate relationships (Laub & Sampson, 2003), cognitions and identity (Giordano et al., 2002, Maruna, 2001), peer relationships (Barry, 2010), financial and material status (Shapland et al., 2011), and relationship to substances (Marsh, 2011). The desisting individual needs to learn how to be able to initiate change, to take advantage of opportunities for change, to discover a sense of productive personal agency, and above all to be able to overcome obstacles and navigate safely through the minefield of early desistance. This is an immense task for any human being, and Bottoms et al. correctly state that ‘it is easier to form sincere intentions to change than it is actually to alter patterns of behaviour’ (2011: 66). It is precisely because of the difficulties inherent in a desistance process that we should heed the words of Porporino (2010:80) when he writes that:

*‘The desistance paradigm suggests that we might be better off if we allowed offenders to guide us instead, listened to what they think might best fit their individual struggles out of crime, rather than continue to insist that our solutions are their salvation.’*

In this section we briefly review the growing body of research into the mediating mechanisms underlying the relationship between ageing and desistance from crime. We start with those social changes such as employment and personal relationships that are typically associated with the move into adulthood. Next, we review some of the more internal or subjective changes in cognition or self-identity associated with a ‘mature’ personality. Research focusing upon the interaction between cognitive transformations, narrative identity developments, and social environments, has produced detailed and valuable insights into individual lived experiences and understandings of desistance.

## **2.2. Defining desistance**

Importantly, recidivism research is solely concerned with reoffending, whereas desistance is typically understood to be more than just an absence of crime. Desistance is the maintenance of crime-free behaviour, hence a process in itself. Desistance, as in the familiar phrases ‘going straight’ or ‘making good’ is an active process in itself. Beyond the avoidance of crime, it also

involves the pursuit of a positive life. When people are crime free for significant periods it provides an opportunity to study the process of desistance. Whether they will remain crime free into the future is not really the point, even one year of non-offending gives a good insight into the process of desistance. In addition, most offenders drift in and out of crime and therefore lumping people into categories of 'offender' or 'ex-offender' can be problematic (Maruna, 2001). Therefore, what researchers should seek to identify are individuals who have achieved a period of offending abstinence, who have a strong desire to remain crime free, and who do not have any plans to commit crime in the future. This desistance oriented outlook is a necessary element for success in the desistance journey.

Obviously to desist means to cease an activity, however this simple definition is problematic when applied to the study of crime. If future behaviour can best be predicted by looking at past behaviour, and if recidivism and relapse are the rule rather than the exception, then how does a precise definition of desistance be formulated? (Maruna et al., 2004). Desistance researchers, like many colleagues in other areas of the criminological endeavour, spend much energy debating how to define its subject of study and definitions are usually modified to suit the needs of individual research projects. Academic researchers have crafted a number of different operational definitions for what they label 'desistance'. Several of these definitions involve some uncertainty as to whether this state of desistance is temporary or permanent. In this research, 'desistance' is more likely to refer to a state of 'temporary non-offending' than a permanent change from one state to another (Bushway et al., 2001). Yet, because these conceptual and operational definitions of desistance vary across existing studies, 'it is difficult to draw empirical generalizations from the growing literature on desistance from crime' (Uggen & Massoglia, 2003: 316-317). These conceptual controversies and methodological impediments to the study of desistance should be born in mind when reviewing the following section on the social and psychological factors thought to be associated with desistance in the theoretical and empirical literature.

Nevertheless, prominent theorists have identified important foundations for the study of desistance. Maruna states that desistance is a 'behavioural term meaning the absence of repeated behaviour among those who had established a pattern of such behaviour' (2012:79), and therefore to study desistance is the 'process of measuring and accounting for the sustained maintenance of inactivity' (2001:17). Maruna classifies any significant lull or crime free period in the life of a persistent offender as primary desistance (2001). While this phenomenon can produce material for the study of relapse and recidivism, it provides little

insight into how offenders achieve longer term desistance. Indeed the initial reason for ceasing offending is unlikely to sustain desistance for very long, especially if offending was stopped to avoid negative consequences such as incarceration or deterioration due to substance misuse. Secondary desistance, on the other hand, is the successful orientation towards a permanent crime free lifestyle that necessarily involves a change in the self identity of the individual (Maruna, 2001). The study of secondary desistance is the examination of the process that enables ex-offenders to remain crime free. Therefore, while short term changes in offending patterns can provide some insight, for desistance research 'the bigger question is how ex-offenders are able to make good in the face of widespread social stigma, limited career opportunities, and social exclusion. Abstaining from crime under these highly criminogenic circumstances requires some explanation' (Maruna, 2001:27).

Bushway and colleagues (2003: 133) depict desistance as a 'developmental process that unfolds over time rather than a static state that is achieved'. Similarly, Laub and Sampson (2003:11) distinguish between the terms 'desistance' and 'termination', arguing that the cessation of offending behaviour is distinct 'from the dynamics underlying the process of desistance'. Termination is the point at which offending stops, and desistance is the long term process of negotiating structural obstacles, social bonds and personal identity as the individual moves away from a life of deviancy and crime. Desistance, therefore, is the process that allows for the absence of offending behaviour, and they state that 'although it is difficult to ascertain when the process of desistance actually begins, it is apparent that it continues after the termination of offending. That is, the process of desistance maintains the continued state of non-offending' (Laub & Sampson, 2003: 21). The labels of career criminal or persistent offender can be used to identify people who have a substantial history of criminal offending (Maruna, 2001) and it is these individuals who should be the target of desistance research (Farrington, 2007; Mulvey et al., 2004), as 'it is not fruitful for criminologists to spend much time studying termination or desistance for low rate offenders' (Laub & Sampson, 2003: 22). Moreover, if criminal desistance is to be considered a desirable path for the offender, and therefore be a worthwhile topic of study for criminologists, it must mean more than reducing or ceasing criminal convictions. If individuals replace their offending behaviour with other antisocial activities, such as alcoholism or chronic welfare dependence, desistance becomes a rather meaningless term that refers to cessation of offending only. Laub and Sampson (2003: 21) state that we cannot see these individuals as representing desisting offenders and that 'perhaps from the narrow confines of the criminal justice system they are, but from a

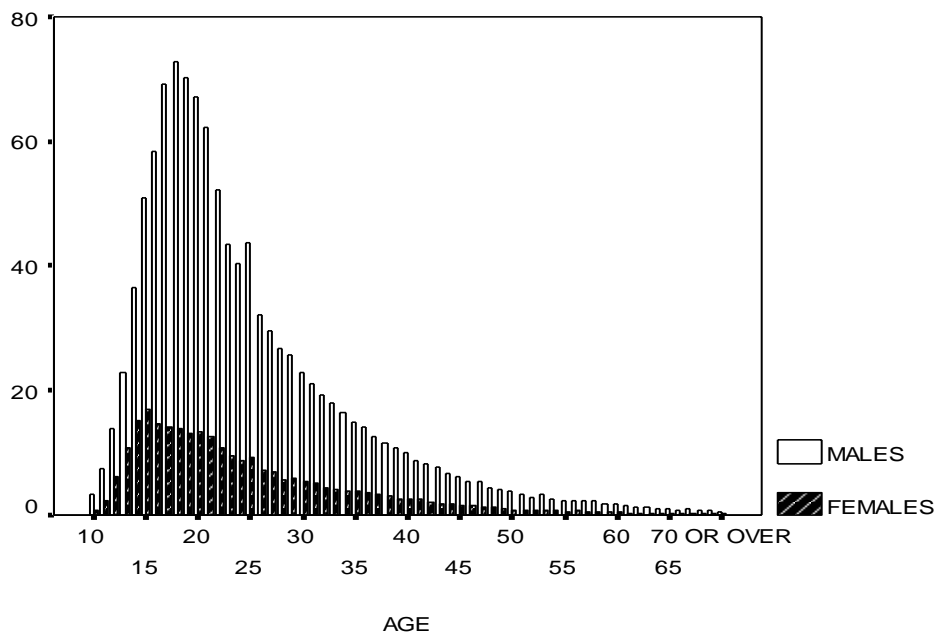
theoretical vantage point, they display traits that imply little change in their antisocial trajectory'. Many offenders are engaged in substance misuse, and drug use can sometimes be the driving force behind a highly irrational cycle of offending and incarceration (Maruna, 2001). In addition the factors that compel entry into criminality and addiction are often very similar. Frisher and Beckett (2006:141) found that 'those with problematic drug use are often involved in criminality and are embedded in criminal groups'. Therefore definitions of desistance that seek to reflect a qualitative change in an individual's life should include the maintenance of abstinence from both criminal offending and substance misuse (Maruna, 2001).

### **2.3. Age and desistance**

The good news is that despite considerable obstacles, almost all one-time offenders do eventually manage to 'go straight' and desist from crime. The 'age-crime curve' is one of the best established facts in criminology, and it is well known that criminal behaviour is far more prominent among adolescents and young adults than it is among those in their 40s, 50s and older. Based primarily on longitudinal studies in the 'criminal careers' tradition, criminologists estimate that approximately 85 percent of crime-involved young people will desist by the time they are 28 years old (see e.g., Blumstein & Cohen, 1987). Moreover, very few of the remainder actually stay engaged in criminality throughout their lives (Laub & Sampson, 2003). There is general consensus amongst criminologists that the majority of offenders age out of crime (Smith, 2007; Laub & Sampson, 2003; Glueck & Glueck, 1943; Gottfredson & Hirschi, 1990), indeed the relationship between age and crime remains 'at once the most robust and least understood empirical observation in the field of criminology' (Moffitt, 1993: 675). It is assumed that most offenders will, at some point in their lives, make the transition from active offender to desisting former offender. Nevertheless, this relationship between age and crime is not as clear cut as it may seem and there are very many unanswered questions regarding why offence frequency decreases with age and comes to an eventual stop for most offenders. Indeed Moffitt has commented that the 'mysterious relationship between age and anti-social behaviour...is at once the most robust and least understood empirical observation in the field of criminology' (1993:679). Farrington (1990), in a study of the criminal careers of 411 London males, found that crime declined and ceased almost completely with age, but that there was a large variety across offence types. For example, burglary offences peaked at age 20 and declined slowly afterwards while drugs and fraud offences didn't peak until age 25, and were still high until age 30. Similarly Laub and Sampson (2003) in their longitudinal study of offending men until age

70, found that even among persistent criminals there was a strong relationship between age and crime. They also found that offence type often determined rate of offending with drug and alcohol related offending peaking in the mid- thirties. They concluded that crime declines for most offenders as they age, but that type of offence has a huge impact on peak offending and age at desistance. Strategies for avoiding arrest such as changing offence type or frequency may be a factor in explaining the age crime relationship (Maruna, 2001), as may changing relationships with alcohol or drugs throughout the life course. Indeed methadone stabilisation has been shown to reduce acquisitive crime among opiate addicted offenders (Bell et al., 1997). For the persistent street offender in particular there are many possible pitfalls that may cut their offending careers short due to high risk behaviours, and 'high-rate offenders are disproportionately likely to exit the risk pool involuntarily through death, injury, and incarceration' (Laub & Sampson, 2003:20). In addition, there are those who may progress to serious or professional crime and their skills and networks may insulate them from the reach of law enforcement (Lea, 2005). Brown and Males (2011) have sought to undermine the age and crime relationship completely by stating that young people commit more crime because they have less money, so the cause is economic rather than anything to do with maturity or the biological dynamics of the organism. However, Piquero et al. (2013) have strongly criticised this work and provided detailed analyses to prove that poverty is an important offending variable regardless of age, and that offending peaks in adolescence and decreases with age across diverse social, economic and cultural groups. Even accounting for factors such as the early deaths of many offenders, incarceration time and strategies to avoid detection, Maruna (2001) is confident that the weight of evidence clearly shows that most criminals offend for limited periods of their lives. Therefore, from a statistical perspective, while we can say that many offenders technically desist from crime, or at least avoid further convictions, there is no clear picture of the reality of many of these ex-offenders' lives and it is unknown how many desist in a healthy and productive fashion.

**Figure one: recorded offender rates per 1,000 relevant population by age-year and sex, England and Wales, 2000 (from Bottoms et al. 2004)**



This age crime curve has no clear explanation although various theories have been put forward. Desistance from crime results from a series of complex shifts in the emotional and psychological processes of the person, as well as changes in the social and environmental landscape. Increasing age does not automatically bring desistance, as a cursory look at the age crime curve might suggest. However advancing age makes it more likely that the important changes necessary for desistance may be initiated and sustained. In other words, simply becoming 30 years old has no mystical property whereby young people are instantly transformed into mature adults. Developmental criminologists claim that the age of desistance, or whether desistance happens at all, depends on causal factors stemming from childhood. Moffitt's (1993) influential taxonomy stated that offenders fall into two qualitatively distinct groups: adolescent limited offenders and life course persistent offenders. Adolescent limited offenders are those who start to offend in their teenage years and mature out of offending by early adulthood. For adolescent limited offenders' risky and criminal behaviours is part of their developmental process, the struggle for independence and adult status. The influence of life course persister peers is important for understanding their offending as these more criminal peers provide example and opportunity to these young people seeking an outlet for their inner drive for independent status. Therefore, an important part of desistance for adolescent limited offenders consists of moving away from the negative

influence of life course persists as they age into young adulthood. Furthermore their higher academic achievements and stronger attachments, relative to life course persisters, will facilitate desistance. Desistance and discontinuity refer therefore to a natural developmental stage of early adulthood when the situational factors that contributed to their offending have changed. Life course persistent offenders, on the other hand, are those who engage in anti-social behaviour in early childhood and continue throughout their lives. The dispositions towards destructive and criminal behaviour are constant throughout the life course, however behaviour and offence type changes as the individual ages and opportunity and social context alters. A person may move from destructive behaviour in school to theft and vandalism in youth, to drug dealing and child abuse in adulthood. These offenders suffer neuropsychological damage, or deficits, from childhood and are, in effect, incapable of desistance from crime. These neuropsychological handicaps, combined with academic failure and broken relationships, doom the life course persistent offender to a life of deviancy. In Moffitt's own words:

*'At the crossroads of young adulthood, adolescence-limited and life-course persistent delinquents go different ways. This happens because the delinquent and personal traits of adolescence-limited's allow them the option of exploring new life pathways. The histories and traits of life-course persisters have foreclosed their options, entrenching them in the anti-social path.'* (1993: 691)

#### **2.4. Desistance and the life course**

Strong social bonds to conventional society are thought to be important for successful prisoner reintegration (see e.g. Wolff & Draine, 2004) and for the desistance from crime more generally (e.g. Laub, Nagin, & Sampson, 1998; Sampson & Laub, 1997), and the strength of one's family relationships are typically seen as being of central importance. Laub and Sampson's (2003) theory of informal social control is by far the best developed and best known theory of desistance. They argue that desistance is largely the result of social bonds developed in adulthood. Following the control theory axiom that a person who is attached to mainstream institutions will be less likely to risk the consequences of offending, the theory suggests that new opportunities for attachments in young adulthood account for the process of desistance. They provide the individual with 'something to lose' by offending. Sampson and Laub further emphasize the 'independent' and 'exogenous' impact of these bonds. They argue that these triggering events occur, at least in large part, by 'chance' (Laub, Nagin & Sampson

1998: 225; see also Horney, Osgood & Marshall, 1995). If these turning points were entirely the result of the reasoned decisions or personal predilections of individual actors, control theorists admit, they could not argue for ‘the independent role of social bonds in shaping behavior’ (Laub et al. 1998:225). Laub and Sampson (2003) have strongly criticised Moffitts (1993) developmental approach to explaining desistance, and state that ‘there is no such thing as a fore-told life course persister’ (2003:179). Their research shows that desistance occurs for many types of offenders at many stages of their lives, and that even persistent active offender’s show huge variety in offending rates with age. Causal factors stemming from childhood, in their view, is a simplistic attempt to account for the complex process of desistance across varieties of offenders. In the 1930s and 1940s Sheldon and Eleanor Glueck (1943) conducted a study of 500 men up to the age of 32. In a highly impressive follow up study Laub and Sampson tracked down 52 of these men and analysed their offending patterns up to age 70. Their findings indicate that the factors that lead to desistance from crime are the opposite of those that lead to persistence, namely the development of social controls, structured routine activities and purposeful productive human agency (Sampson & Laub, 2003). They found that job stability, military service and marriage all had the potential to significantly alter offending trajectories and support desistance. These turning points came as a result of an offender attempting to ‘knife off’ their past by a dramatic change in location or entering the military. The concept of ‘knifing off’ ones past, although there is no agreed definition of the term, has been identified as an important component in successful desistance for some individuals (Laub & Sampson, 2003, Maruna, 2001). This process involves leaving past acquaintances, geographical locations, and even sometimes family, behind and cutting all contact. Crucially though Maruna et al. (2007) identified that it could also take the form of an internal change, or a change in the way the offender views themselves, their past, and their environment. Life Course Theory posits that desistance could also happen simply by drift, that is an offender gaining a job or marriage that they do not want to lose by continued offending. Regardless of the path to desistance, these structurally induced turning points, especially marriage, can lead to

- 1) a ‘knifing off’ of the past from the present,
- 2) opportunities for investment in new relationships that offer social support, growth, and new social networks,
- 3) forms of direct and indirect supervision and monitoring of behaviour,



- 4) structured routines that centre more on family life and less unstructured time with peers,
- 5) situations that provide an opportunity for identity transformation and that allow for the emergence of a new self or script.

They state that these factors can be true regardless of the quality of the marriage or criminality of the spouse because, in general, men marry up and women marry down. Informal social controls, or social bonds, can include cohabiting and parenthood, both of which have been shown to reduce likelihood of offending (Sampson & Laub, 2006; Katz, 1999). People who lack these bonds are the least likely to reduce or stop offending because, put simply, they have nothing to lose. Rebecca Katz (1999: 13) states that ‘families of procreation may play as large a role in developing desistance as early family of origin process play in the development of self-control and delinquency’. Life course theory includes many aspects of social learning theory, which states that less exposure to criminal peers will lead to fewer opportunities for offending, and consequently attitudes and beliefs favourable to conformity will develop (Warr, 1998). Life course theory rejects the determinism of developmental theories of criminal offending and desistance. While they agree that childhood factors are important, Laub and Sampson state that adulthood experiences can be just as, and possibly more, important in determining the life trajectory on an individual prone to offending:

*‘Offenders desist as a result of individual actions (choice) in conjunction with situational contexts and structural influences linked to key institutions that help sustain desistance. As such we argued that desistance is a process rather than an event, and that It must be continually renewed. This fundamental theme underscores the need to examine individual motivation and the social context in which individuals are embedded.’ (2003: 171)*

Importantly, Sampson and Laub (1993) argue that employment ‘by itself’ does not support desistance, rather, ‘employment coupled with job stability, commitment to work, and mutual ties binding workers and employers’ reduces criminality’ (146). Indeed, it is the quality of the job that could be important (Uggen, 1999), that is, employment that provides security and a wage that allows subsistence above the poverty line. Conversely, the loss of a job, and therefore the loss of the social and subjective benefits of employment, can lead to an individual being derailed and returning to offending through frustration and economic stress.

Warr (1998, 2002) has provided the best developed sociological alternative to Sampson and Laub’s theory. Warr counters that changes in post-adolescent peer relations, rather than the

development of adult institutional attachments, are at the heart of the desistance process. In his social learning or differential association-based reinterpretation, Warr argues that changes in social networks (e.g., exposure to offending or delinquent peers, time spent with peers, and loyalty to peers) can account for the decline in crime with age. When a person drifts away from criminal peer networks who promote and rationalize deviant behaviours, they lose both the motivation and the means of committing most types of criminal behaviour. Warr does not doubt that adults who are employed and in stable marriages are most likely to desist from crime, but he argues that this is because married and employed individuals have the least amount of time on their hands to associate with their rowdy friends. Therefore, it is the associations, rather than the informal social control factors that are driving desistance.

Research tells us that individuals in the criminal justice system often face many personal difficulties such as mental illness, learning disabilities, chronic shame, and especially substance addiction (Maruna, 2001; Moffitt, 1993). Even if an offender wants to desist and does not want to continue to suffer the negative consequences of offending, a drug habit will often prevent them from doing so (Marsh, 2011). For example, when released prisoners fail in their efforts to reintegrate into the community, the greatest percentage name on-going problems with drug use as the central reason for their return to prison (Visher & Courtney 2007). Drug use is therefore an important causal factor in much offending, particularly in long term offending. It also has important indirect effects on desistance due to its detrimental impact on social bonds, such as marriage and employment, in particular.

## **2.5. Cognitive transformation**

The potential for marriage or a significant relationship to alter offending behaviour has been questioned by Schroeder et al. (2007). Without becoming motivated and committed to changing oneself and striving towards a law abiding and prosocial identity the control potential of a new relationship can be dismissed or refuted by the individual. Furthermore, the new spouse could herself be part of an extended offending network and therefore not represent a positive influence on the offender. Giordano and colleagues (2002) put forth a comprehensive theory of desistance through cognitive transformation that can be seen as a theoretical critique of Life Course Theory. This cognitive transformation occurs in four stages and the individual must move through each stage for successful desistance to be achieved. The desistance process involves, 1) a shift in the individuals openness to change, 2) exposure to a hook or multiple 'hooks for change', 3) being able to envision and craft a new self, a

replacement self to take the place of the old 'criminal' self, and 4) the desistance process is very advanced when the ex offenders views on deviant behaviour and their past lifestyle have been transformed (1000-1002). The discovery of a sense of prosocial personal agency, no matter how fragile, is very important as the authors 'emphasise the actors own role in latching onto opportunities presented by the broader environment' (Giordano et al., 2002:1000). Personal agency is the essential component in the interaction between the individual and their structural environment as they must actively seek to take advantage of opportunities or possibilities for change. The person must be open to change, and 'their subjective stance is especially important during the early stages of the change process' (1000).

When the individual is exposed to a hook for change they must be open to the potential positive benefits that it can provide. This cognitive state is essential for the actor to interact with environmental hooks. Additionally, hope is an essential subjective emotion at this point as the actor should be striving to leave a life of offending behaviour behind them. These hooks for change are the central component of the theory of cognitive transformation, and can 'provide an important opening in the direction of a new identity and concrete reinforcement during all phases of the transformation process' (Giordano et al., 2002:1001). Through accepting and engaging with the opportunity for change, the person can eventually come to a stage where they can begin to envision a replacement self that is incompatible with old behaviours. This new self will have a new set of values based on conventional role models and the old criminal identity will be marginalised. The potential of identity to guide behaviours and lead to desistance is greater and has a more solid foundation than reliance on structural change such as employment and marriage. Once the person gets to a stage where their view of the past deviant behaviours, and deviant behaviour in general, has been transformed thoroughly they can be seen as completing the desistance process. Furthermore, they will have invested much in their new lives and will not want to suffer the consequences of a return to criminal offending. Ultimately, the 'product of all these dynamic processes is enhanced internalised control, perhaps the most important type of cognitive transformation' (Giordano et al., 2002:1057). A further critique of Life Course Theory is that it does not properly account for the impact of substance misuse on offending and desistance trajectories. Drug use is an important causal factor in much offending, particularly in long term offending. It also has detrimental effects on social bonds and marriages in particular. Though Laub and Sampson (2003) did take the effect of alcohol use on marriage into account in their Life Course Theory of desistance, Schroeder et al. (2007) state that drug use has more serious

implications for the viability of relationships. They further state that ‘adult social bonds do not have a significant long-term effect on criminal involvement and that social bonds do not significantly mediate the relationship between drug and alcohol use and offending’ (212).

## **2.6. Narrative, identity and desistance**

Maintenance of desistance from crime can depend upon developing a new identity, and new values and beliefs that are not compatible with criminal offending (Burnett, 2004). Indeed a significant amount of work done in rehabilitating offenders and addicts, such as 12 Step and cognitive behavioural therapy, targets change in the individuals self-perception (Maruna, 2001, Marsh, 2011). Every individual, whether an offender, ex-offender or regular citizen has a self-narrative through which they seek to impose order on their lives. This self-narrative is a crucial tool for connecting the past with the present and into the future as it provides a sense of continuity and coherence in the life course. For the desistance journey to make sense, the ex-offender needs to develop a new understanding of their past that entails a coherent narrative of how the social and personal context impacted upon their decisions and behaviours (Maruna, 2001). This narrative must connect the past to the present as the desistance journey is an outcome of the past and a logical necessity or natural progression from their past life. Their new pro-social identity is an inevitable outcome of the trials of their former path, and indeed it was always there buried beneath the addictions and criminal behaviours. Crucially self-narratives provide a subjective account of the meanings that offenders place upon changes and turning points in their lives (McNeill, 2006). Often at least part myth, self-narratives help people explain their actions and decipher their motivations. Desisting offenders, in contrast to their persisting colleagues, feel extremely positive about their future prospects. Self-efficacy and confidence are very strong, as is the perception that offending is no longer an option as it no longer fits with their self-concept. The individual essentially re-writes the past and develops a redemptive narrative, often stating that their past life was meant to be as it led them to their current circumstances and mindset (Maruna, 2001). Another feature that is often present is the belief that a higher power or universal plan has led them to where they are supposed to be. This belief leads many ex-offenders to become counsellors or youth workers as they believe that desisting or recovering people have a high level of wisdom to pass on to young people and active offenders.

The Liverpool Desistance Study (Maruna, 2001) provided ample evidence that a strong theme of this ‘redemption script’ is the belief that the desisting ex-offender accepts full

responsibility for their future behaviour, and feels quite confident in their ability to lead a crime free life. These ex-offenders do not take full responsibility for their past crimes, however they do take full credit for their desistance. An internalisation of full responsibility for their future, including the determination to overcome the many obstacles they will face, seems to be a defining feature of successful desisting ex-offenders. Maruna (2001:88) summarises the themes of the desisting person's narrative as

- 1) *an establishment of the core beliefs that characterise the persons 'true self'*
- 2) *an optimistic perception (some might say useful 'illusion') of personal control over ones destiny*
- 3) *the desire to be productive and give something back to society, particularly the next generation*

It must not be assumed that desisting ex-offenders accept passive responsibility for all of their actions. The idea that reformed criminals accept blame and feel shame for all of their crimes is not supported by research (Maruna, 2001). Admissions of guilt are certainly a characteristic of successful desistance, however accompanying such admissions are often justifications, rationalisations and blame. The strongest trend is for ex-offenders to claim they were sometimes the victim of circumstance, and other times they just made stupid mistakes. The offender was a good person who was caught up in bad behaviours. Another reason for this lack of accepting responsibility for past crimes is the perception that society had greatly wronged them. Desisting ex-offenders can refuse to accept responsibility for offending against laws that they perceive to be based on middle class values and serve the interests of middle class communities, representative of a society that had neglected and mistreated them (Maruna, 2001), and the product of what they consider an illegitimate social contract (McNeill, 2009).

Contrary to Life Course Theory (Laub & Sampson, 2003) that stresses the primacy of informal social controls for maintaining desistance, Maruna (2001) found that generativity was the most dominant theme. In this context generativity refers to the rehabilitative effects of work, either voluntary or vocational, and Maruna states that generativity is 'a product of both inner drives and social demands' (2001: 118). From this perspective the desisting ex-offender needs to find a way to give back to society. Therefore any employment or voluntary work they may get involved in has to have depth and meaning to ensure continued engagement. Generative work can teach the ex-offenders that they can survive in the straight world and do not need to return to crime. Moreover when the desister becomes part of an organisation or

movement, whether its employment or voluntary, this greatly enhances their chances of sustaining desistance (Maruna, 2001; Marsh, 2011). The ex-addict who becomes an addiction counsellor, or the ex-offender who goes to work with troubled youth, is a well-known stereotype. Maruna states that this serves four distinct and important purposes:

- 1) Restitution: The desisting offender gets the opportunity, to some extent, to set right the harms done to society. This can be very important for the desisting offender who is attempting to come to terms with past mistakes.
- 2) Legitimacy: When the desisting ex-offender successfully becomes a youth worker, or counsellor, for example, they have in a sense proven their change is legitimate and achieve greater degrees of public acceptance.
- 3) Fulfilment: Meaningful work gives meaning to their existence and helps desisters feel like the past was not a complete waste.
- 4) Therapy: By far the most important, helping others is helping themselves. This is the core belief of movements like the 12 step fellowships.

It is important to try understand the relationship between subjective and social factors in the desistance journey (LeBel et al., 2008). Structural and ontogenic accounts of desistance have much to offer, however it is the meaning that these changes have to individuals that make them important life events and processes (McNeill & Weaver, 2012). The social and economic context in which offenders attempt to desist, can make the process extremely difficult with momentum being interrupted by a wide variety of personal and structural obstacles. These obstacles often include return to criminogenic environments after release from prison, homelessness, addiction, and limited career and educational opportunities (Richards & Jones, 2004), as well as the difficult emotions of early desistance or recovery as described by Maruna; ‘they face internal questions of shame, blame, guilt, and culpability for their offending and also for the state of their lives’ (2001:55). Therefore, hope is a very important subjective theme for desistance and relates to the individual’s ability to see goals as achievable, to understand and believe that they can reach personal and social goal (LeBel et al., 2008). However ‘the brutal reality is that the social circumstances of the lives of many repeat offenders suffocate hope’ (McNeill & Weaver, 2010:17), therefore the importance of mentors or respected others in encouraging and supporting desisting offenders cannot be overstated. Indeed, integral to the success of the 12 step movements is the part played by a recovery sponsor (Marsh, 2011) and desisting people have indicated that they gained inspiration and practical advice from a wide variety of individuals including probation

officers, youth workers, counsellors, and family members (Maruna, 2001). Personal resources such as strength and motivation that are fostered through improving relationships with family and community, as well as practical resources like improving education and skills based training, increase the human and social capital of the former offender that is vital for the desistance journey (McNeill & Weaver, 2010).

## **2.7. Young people and desistance**

The type of cognitive transformation described by Giordano et al. (2002), and the rebiographing and identity reconstruction described by Maruna (2001), relate to persistent offenders, individuals with a spoiled and stigmatised identity who offend against community and society on a regular basis. Occasional offenders, or young people who have a limited offending trajectory, do not have to undergo such a process to stop. One distinct possibility that may explain why the majority of young offenders stop offending is that they, to put it simply, grow out of crime. The maturation process may lead them to be less susceptible to temptation and peer influence, less likely to engage in risky behaviours through fatigue with the physical and psychological consequences of offending, and develop better impulse control (Mulvey et al., 2004). Maruna and LeBel provide a compelling insight when they state that

*‘Maturation is more powerful than any ‘programme’ designed by the police, prison service or others to reduce crime. This argument is certainly supported by considerable evidence. For most individuals, participation in ‘street crimes’ like burglary, robbery and drug sales (the types of offences of most concern to criminologists) generally begins in the teenage years, peaks in late adolescence or young adulthood, and dissipates before the person reaches 30 years of age’.* (Maruna & LeBel, 2012:67)

Murray (2009) identifies three distinct types of categories in her research of young people attempting to desist from offending. First are the ‘reformed characters’, young people who fit the characterisation of the ‘pure desister’, that is they no longer offend and appear to have a high degree of confidence in their ability to remain crime free. These young people ‘told a desistance tale’ (119), they were able to account for their past offending and their plans for a good future within one coherent story. The second type, whom Murray calls the ‘quasi resister’, do not consider themselves to have ever been offenders or deviants so they feel no need to explain why they currently do not offend or how they will remain crime free into the future. Their past offence is acknowledged but they view it as something they did rather than something they were or are. The third type, ‘desisters on the margins’, are young people who

are very much embedded in an offending lifestyle and while they may state that they want to stop offending they still display a lot of criminal values, such as no regret for past offending and no sympathy for victims. They also display have little interest in how they might plan a healthy prosocial future. In Barry (2010), young people cited the negative side effects of an offending lifestyle as being the primary motivating factor in the desire to desist from crime. These 'push factors' included incarceration, health problems, and being unable to fulfil family or parental obligations. Pull factors, such as the desire get a job or create a new life, were much less significant. For young people, the provision of leisure activities and opportunities for quality recreational pursuits, including safe social space for socialising, is more important than employment opportunities. The centrality of substance misuse to youth offending was identified in Barry's research, and indeed young people wishing to desist emphasised the need for information, advice and support in relation to their drug use as being vital for their desistance from crime. Young people who have offended have themselves voiced the essential nature of this personal support and consider the most important aspect of their relationships with social workers or other mentors to be listening to their difficulties and quality personal interaction (Barry, 2010). Therefore, the more that interventions are crafted to suit the needs and social context of an individual then the more successful they will be. Interventions that are devoid of awareness of the person's social context will only create more personal and structural obstacles for the person to face.

Barry (2010) has argued that despite the robust evidence of the age crime curve which shows that people desist from crime in their twenties that young people can indeed desist earlier given the right circumstances. Specifically, Barry states that 'the point in time at which young people stop offending is closely associated with the opportunities they are afforded in the transition to adulthood. Such opportunities are equated with being trusted, being given responsibilities and being recognised as key players in mainstream (i.e., 'adult') society' (2010: 13). Nevertheless, it must be recognised that offending individuals can face many subjective difficulties such as mental illness, learning disabilities, chronic shame, and substance addiction. Even if an offender wants to desist and does not want to continue to suffer the negative consequences of offending, a drug habit will often prevent them from doing so. As outlined above, there has been a huge increase in desistance research over the past two decades and much excellent work has identified themes, structural, social, and subjective, that support desistance in ex-offenders lives. It should, however, be emphasised



that desisting offenders are just as varied in their social, emotional and psychological essence as active offenders, and indeed as any human being.

Barry (2010) claims that the Youth Justice system is incapable of providing the type of positive practical support that young people need to develop new thinking and behaviours, and therefore policy makers and practitioners must work in a multi-disciplinary fashion to effect change. While it is true that youth work, social work, and other helping professions have much to offer in terms of insight and best practice, it must be recognised that the probation and restorative justice fields also have much to offer young people who desire change. The value of genuine and constructive relationships with influential others, particularly probation officers, that constitutes positive social capital has been noted by McIvor et al. (2009) in their research into women's desistance journeys in Australia. This relationship based support was crucial for released female prisoners in their quest to lead a crime free life despite the huge structural and personal obstacles they faced. Furthermore, the difficulty of working with active offenders, of any age, must not be underestimated. Similarly, guiding and assisting those in the early stages of desistance from crime, or recovery from addiction, is not an exact science and simple solutions based on an analysis of adult restrictions to entry to mainstream society should not colour our perceptions of the fragility of the desistance process and the expertise and care required to support those who seek to travel this highly subjective path. The outline of the literature presented in this section makes clear that regardless of the method or avenue that a desisting individual travels; he or she must be engaged in the process in an agentic fashion. In fact, considering the very significant obstacles facing those who wish to leave a life of crime, a tremendous amount of courage, dogged determination, and resilience must be present within that person. The role of the practitioner, mentor, significant other, should be to recognise the desisting persons change in behaviour and reflect it back to him or her in a de-labelling process (Maruna, 2001).

## **2.8. Conclusion**

Desistance theories, then, state that desistance from crime is associated with gaining personal control over one's life circumstances. In other words, individuals develop skills that bring competence and autonomy, and success in employment. They are also able to initiate and nurture new relationships and these interpersonal bonds are crucial for the success of the desistance process. Although there are a variety of theories on how the process works, all these perspectives agree that desistance involves the development of alternative, prosocial

sources of achievement and affiliation in the lives of crime-involved individuals. The ‘good news’ then is that the research literature is clear that most of the people labelled ‘offenders’ report wanting to desist from crime (Burnett, 1992). Many researchers note that ‘hope’ may be a necessary, if not sufficient condition for an individual to be able to desist from crime (see e.g. LeBel et al., 2008; Maruna, 2001). Snyder et al. (1991, 570) define hope as ‘the perception of successful agency related to goals’ and ‘the perceived availability of successful pathways related to goals.’ Having hope, then, is different to just wishing that something would happen. Hope requires both the ‘will and the ways,’ the desire for a particular outcome, and also the perceived ability and means of achieving the outcome (Burnett & Maruna 2004; LeBel et al. 2008). Research suggests that hope and self-efficacy may even condition the experience of social problems after prison. Hope can impact a person’s likelihood of selecting into and taking advantage of positive social opportunities, like employment or marital attachment; it can also help a person weather life’s disappointments or inevitable setbacks in such areas (LeBel et al. 2008). The desisting individual needs to learn how to be able to initiate change, to take advantage of opportunities for change, to discover a sense of productive personal agency, and above all to be able to overcome obstacles and navigate safely through the minefield of early desistance. This is an immense task for any human being, and as Bottoms et al. (2011:66) state, ‘it is easier to form sincere intentions to change than it is actually to alter patterns of behaviour’ Indeed, the social and economic context in which offenders attempt to desist can make the process extremely difficult with momentum being interrupted by a wide variety of personal and structural obstacles (Maruna, 2001). These obstacles often include return to criminogenic environments after release from prison, homelessness, addiction, and limited career and educational opportunities (Richards & Jones, 2004). As McNeill and Weaver (2010: 17) have written: ‘the brutal reality is that the social circumstances of the lives of many repeat offenders *suffocate hope*’.

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## **Chapter 3 - Restorative justice and restorative justice practices**

Katrien Lauwaert

### **3.1. Restorative justice and restorative justice practices**

Restorative justice has been described as a social movement, a philosophy, or a set of practices based on common values and principles. It came about in reaction to the flaws of the traditional criminal justice system, with a focus on bringing the victim back in the picture, and in some regions it built on traditional practices. Restorative justice sees criminal offending as conflicts between people, which result in concrete harm done to people and communities, and not in the first place as a conflict with the state.

The UN definition describes RJ programmes as programmes which use restorative processes and seek to achieve restorative outcomes. Restorative processes are ‘any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator’. A restorative outcome is ‘an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution, and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender (UN Economic and Social Council, 2002).’ This is just one of many definitions of restorative justice, who emphasize different aspects or values.

Most definitions cover a wide range of practices, which reflect to a larger or lesser extent the values commonly attributed to restorative justice, such as respectful dialogue, active participation of the people directly affected by the crime, empowerment, restoration and inclusion. Victim-offender mediation and conferencing, the practices included in the empirical research of this study, belong to the core of restorative justice.

Victim-offender mediation sets up a dialogue between the victim and the offender with the help of an impartial mediator. Sometimes other persons take part in the mediation, such as family members or partners, but this is not systematic. The dialogue can be direct, this is face-to-face, or indirect. In the latter case the mediator brings messages from one party to another

operating a kind of shuttle diplomacy, and messages can also be conveyed through letters or video. Indirect mediation tend to be more focused on obtaining an agreement than direct mediation, in which dialogue and its healing power is most essential. Victim-offender mediation is still the dominant RJ practice in continental Europe.

Conferencing sets up a dialogue amongst a larger group of persons. Victim and offender bring support persons, such as family members or social work professionals, and the community can be represented by for example the police. Conferences tend to tackle not only the specific incident but also underlying problems and possible solutions. This brings about an orientation towards the future. Preparing a reparation plan is often a standard part of the conference, and such plan addresses needs for reparation towards the victim as well as rehabilitative needs of the offender. Conferencing is most developed and practice in anglo-saxon countries. It is thus not surprising that a lot of the research which we will look at further on and which was undertaken in the UK, Australia, New Zealand and the USA focuses mainly on conferencing.

Restorative justice practices such as victim-offender mediation and conferencing are organised in different ways in relation to the criminal justice system. They can be organised at all phases of the criminal procedure: at police level, at the level of prosecution, at sentence or even post-sentence level during the execution of the sentence. Equally, some practices are organised completely independent from the criminal justice system, others run parallel to the criminal procedure but the outcomes can be taken into account by the criminal justice decision makers. Finally, some are entirely integrated in the system, as a diversion measure or as a replacement of the sentence (UNODC, 2006).

Over the past thirty years, the development of restorative justice practices has been considerable. In some countries or regions, such as in Northern Ireland for juvenile offenders, it has become a mainstream reaction to offending, while in many other countries it still operates in the margins of the criminal justice system. A certain scepticism towards implementing restorative justice practices remains tangible in professional circles in many European countries. With growing practice, public funding of the practices, and remaining scepticism, there has been an increasing demand to know what the effect of participation in restorative justice processes is on offending behaviour. Is investment in restorative justice money well spent? Does it help to work towards one of the major goals of the criminal justice systems, namely the prevention of reoffending?



### **3.2. Restorative justice, recidivism and desistance**

Shapland and Robinson (2008) point out the ambivalence of the restorative justice community towards the theme of reducing recidivism and offender rehabilitation. Often it is not seen as a priority. Paying too much attention to it could mean overemphasizing this typical criminal justice goal, while restorative justice has worked hard to put its alternative goals on the agenda such as reparation and healing through respectful dialogue and active participation of the directly concerned persons. It is moreover argued not to be a realistic expectation that a limited intervention such as a mediation or a conference, would have a dominant impact on reoffending. This seems to be supported by desistance research which shows that desistance is a process, involving ups and downs, influenced by many different factors and events in people's lives as we have seen above. This is particularly true for repeat offenders with heavy involvement in crime over a longer period, as they often also have to do with social and economic issues, which represent individual and structural obstacles on their path towards desistance. Interventions of (justice) professionals are just one sort of events in people's lives, and speaking of victim-offender mediation and conferencing, these interventions are limited in time and intensity.

This does not mean that there is no interest at all for prevention of recidivism and rehabilitation in restorative justice circles, as becomes clear from the goals set by restorative justice programmes, from attempts to link restorative justice and desistance theoretically and from numerous empirical (quantitative) studies on the effect of restorative justice interventions on reoffending.

#### *3.2.1. Reduction of reoffending as a goal for restorative justice programmes*

Some programmes include prevention of reoffending as a specific goal. This is for example the case for the Northern Ireland conferencing practice with juveniles included in the empirical part of this project and operated by the Youth Justice Agency. Contrary to conference programmes, victim-offender mediation services more typically see prevention of reoffending not as a core task, but rather as a happy side effect.

#### *3.2.2. Recidivism research*

In the past two decades numerous studies have been carried out which measure the effect of restorative justice on future offending. Much of that research is carried out overseas, in Australia, New-Zealand, North-America and the UK (Hennessey, 2007: 433; Robinson, 2008:

247). Most of these studies compare the reoffending of offenders who are taking part in a restorative justice programme with the reoffending of those who are not. Also some meta-analyses have been done. A brief outline of existing studies and results illustrate the diverse and mixed results concerning restorative justice and reoffending. Some studies have demonstrated the ability of restorative justice to reduce crime (Maxwell & Morris, 2002; McGarrell, Olivares, Crawford, & Kroovand, 2000; Shapland, Robinson & Sorsby, 2011), while others have concluded that restorative justice did not have any effect on future offending (Miers et al., 2001; Sherman, Strang, & Woods, 2000; Wilcox, Young, & Hoyle, 2004).

Not so optimistic results were obtained for example in a large comparative analysis of restorative justice in the UK which examined the data of approximately 20,000 offenders receiving restorative and traditional programmes (matched control group) for a follow-up period of 24 months. No evidence was found to suggest that restorative programmes had any statistically significant impact on reoffending rates or that they were more effective for particular subgroups and offenders (Wilcox et al., 2004: 16). This larger study followed a smaller qualitative field study of Hoyle, Young and Hill (2002). They followed 51 offenders who received a restorative caution and noticed a 25 %t reduction in offending after this caution.

Another study in the UK assessed seven restorative justice schemes and found out that only one of these schemes obtained a significant difference in reoffending rates compared to a matched control group of offenders who were not referred to a restorative justice programme. Approximately 44% of the restorative justice group were reconvicted after two years, compared with 56% for the control group (Miers et al., 2001: 44).

The results of the RISE (Re-Integrative Shaming Experiment) study in Australia are nuanced and suggest that the potential of restorative justice to reduce reoffending vary according to the type of offender. The researchers followed four types of offenders randomly assigned to a police-run conference or court for a follow-up period of 12 months and compared reoffending rates. The researchers found that conferences may be effective in reducing further offending for young violent offenders, but not for young property offenders and drunk drivers. Conferences also seemed to be effective in reducing reoffending of violent adult offenders (up to the age of 29 years). Drunk drivers who passed through a conference had a slightly higher reoffending rate than those who did not. Regarding the property offenders, they did not notice

significant differences between the offending rates of both groups (Sherman et al., 2000: 18-19).

Even if some studies suggest that programmes should be targeted at less experienced offenders (Bonta et al. in Hennessey, 2007: 435; Maxwell & Morris, 2002; Miers et al., 2001: 45-46), most studies found, as was the case in RISE, indications of a more effective impact of restorative justice on reoffending for more serious crimes (Mirsky, 2004: 2; Sherman et al., 2000: 18-19; Hokwerda in Vanfraechem, 2006: 178). Similar results were obtained in a USA study comparing reoffending of young offenders randomly assigned to a police-run conference or to a youth court. The findings suggest that some types of offenders, such as violent offenders, were less likely to reoffend when they participated in a conference, although the researchers could not be sure that the effects of the conference led to the reductions in reoffending and not the state of mind of the offender, because some offenders who were assigned to a conference, declined and went to court (McCold & Wachtel in Hennessey, 2007: 433).

A number of other studies present quite optimistic results. Two studies in the USA confirmed the potential of restorative justice to reduce reoffending. The first one especially for conferences. The researchers compared reoffending rates for 14 years of age or younger first-time offenders who were randomly assigned to a conference or to court diversion programmes (including victim-offender mediation). After 6 months follow-up there were 14 per cent fewer recidivists among the conferencing group than among the control group. This difference represented a 40 per cent reduction in reoffending (McGarrell et al., 2000: 48).

In Canada, researchers found a significantly lower rate of reoffending for offenders referred to restorative justice too. They compared the reoffending rate between offenders referred to restorative justice and those receiving a traditional justice sanction. The groups were matched on age, race, gender, offense type and first offense (Bonta et al. in Hennessey, 2007: 434).

In New Zealand, Maxwell and Morris (2002) compared reoffending rates for 200 adult offenders participating in two community panels with a matched group of adults referred to court. They found out that the adult offenders participating in a community panel were less likely to be reconvicted than those who appeared in court. They also analyzed the reconviction data of 161 young offenders who participated in a group conference for medium and serious offending. Six years after the family group conference more than 40% were not reconvicted or were convicted only once (Maxwell & Morris, 2002, p.143).

In a very interesting and robust research, Shapland, Robinson, Sorsby and colleagues (2011: 170-171) made an evaluation in the UK of three schemes, CONNECT, REMEDY and JRC, which offered conferencing and/or mediation to adult offenders involved in minor and more serious offences. They analysed the reconviction data of adult offenders who had taken part in a programme and a control group for a follow-up period of two years. They did not notice significant effects on severity of reconviction, or whether or not someone was reconvicted, but when someone was reconvicted they noticed a significant decrease in the frequency of reconviction over the following two years. The frequency of reconviction was measured in terms of the number of times an offender was reconvicted for an offence or offences. A smaller percentage of the offenders of the three groups going through a restorative programme reoffended than the offenders of the other groups, but the difference between both was not statistically significant. Finally, they also noticed some significant links between reoffending and *'the extent to which the conference had made them (the offenders) realize the harm done; whether offender wanted to meet the victim; the extent to which the offender was observed to be actively involved in the conference; how useful the offender felt the conference was.'* (Shapland et al., 2011: 170).

Finally, some meta-analyses seem to confirm the potential of restorative justice to reduce crime as well. The most important conclusions of the meta-analysis of Sherman and Strang, (2007: 68-72) are that restorative justice programmes substantially reduced repeat offending for some offenders (but not all) and it reduced recidivism more than prison. Two other meta-analyses conducted in Canada confirmed the potential of restorative justice programmes to reduce reoffending. The first meta-analysis (Bonta et al. in Hennessey, 2007: 435) found an average effect size of 0.08, what means that restorative justice programmes yielded an average 8 per cent reduction in reoffending in comparison to non-restorative programmes. They analyzed 14 restorative justice and reoffending studies. All studies included a control group. A second further meta-analysis of Latimer, Dowden, & Muise (2005) analyzed 22 studies that compared a restorative justice programme with other types of interventions on reoffending. They found out that restorative justice programmes yielded an average 7 per cent reduction in reoffending compared to non-restorative programmes (average effect size = 0.07). Although both studies have obtained positive results, they still point to the highly variable nature of the effects of these programmes on recidivism. Some programmes were able to reduce recidivism as much as 38 per cent, while others even increased recidivism.

A lot of time and efforts has been invested in a vast number of reoffending studies, of which we just cited a few major outcomes. The outcomes have to be handled with precaution and should not be generalised for several reasons (Departement of Juvenile Justice (Italian Ministry of Justice), 2010; Latimer et al., 2005; Hennessey, 2007; Robinson, 2008; Vanfraechem, 2006). Although outcomes are often presented as the effect of RJ on reoffending, they cover very different practices. The majority of reoffending studies address conferencing and other practices which are less common in continental Europe, such as community panels, and far less mediation practice. Moreover, they concern far more often juvenile offenders than adults. Many of these studies suffer from methodological difficulties. It is for example difficult to constitute a proper control group. Assigning cases randomly to RJ or a court intervention is also difficult given that participation in RJ is voluntary. When not enough additional values are integrated in a study, causal relationships can be found between two variables which are in fact produced by other variables which are not taken into account.

What we take from the outcomes of these studies for our research is the established potential of restorative justice processes to influence reoffending. They learn us very little however, about why this influence might occur. At most there are indications that the effect on reoffending is better in case of more serious offences than for minor once. But which of the practices are more effective, which elements of these practices are the 'active substances', and for which groups this is the case, these are all questions that remain almost completely unexplored. Getting answers to these questions requires another approach than the quantitative approach used in recidivism research. If one wants to understand the mechanisms within restorative processes which influence positively desistance from crime we have to move to a qualitative approach. Finally we keep in mind that the preventive effect of RJ is not spectacular. From desistance research we have learned that 'going straight' involves often a long and windy road full of obstacles and which involves many aspects in life. A restorative justice process is then only one of the many things happening on a person's path towards desistance.

If we want to try to understand why restorative processes can have preventive effects, we can resort to some theoretical frameworks which offer partial hypothetical explanation, and to an interesting attempt made by Shapland, Robinson and colleagues to see what of these theories become visible in the material they gathered in their major evaluation study already mentioned above.

### *3.2.3. Theoretical frameworks*

Different theoretical frameworks make plausible, at least in theory, that restorative justice processes contribute to desistance and rehabilitation. Braithwaite (1999) refers to a whole list of theoretical hooks to support this vision, amongst which his own re-integrative shaming theory and procedural justice theory.

Reintegrative shaming theory (RST) involves showing disapproval of the offence by the offender's communities of care with the intent of invoking remorse in the person who is shamed. While the offence is disapproved, a relationship of respect is maintained with the offender and it is important that the offending is not viewed as the offender's main characteristic. The target is thus the offence without labelling the offender as bad. Shaming is most effective when done by the people the offender cares most about. It should not be stigmatic, but rather reintegrative and therefore, the disapproval is followed by gestures or words of forgiveness and reintegration (Maxwell & Morris, 2002). According to Braithwaite, reintegrative shaming supports conscience building and the new or reconstituted morality prevents future offending. This theory, explicitly oriented towards crime control, has underpinned the development of many practices of conferencing. Well known examples are the Wagga Wagga model and the reintegrative shaming experiment (RISE) in Australia, the Thames Valley restaurative cautioning in the UK and the conferencing programme set up in the Justice Research Consortium (JRC), which was evaluated by Robinson and Shapland.

Different authors also draw attention to the extent to which Tyler's (1990) theory of procedural justice may play a role in reducing recidivism after restorative processes. This theory suggests that the perceptions of and satisfaction with the justice processes affect the offender's view of the law and thus influence decisions to reoffend. When offenders feel they are treated with respect during the process, their attitudes are more likely to be positive. Different studies showed that offenders who are taking part to a restorative justice process are more likely to feel they were treated fairly and to be satisfied with the process (Daly, 2001; Karp, Sprayregen, & Drakulich, 2002; Latimer, Dowden, & Muise, 2005; McCold & Wachtel, 2003).

Both desistance research and research about the resettlement or re-entry of ex-prisoners have pointed out the importance of social capital and human capital for staying crime free and for supporting reintegration in society. Social capital refers to positive relations with individuals and institutions, which support conventional behaviour. Support by partners and family and

other social networks are good examples. Human capital refers to the individual skills and competences a person possesses or acquires which allow him to act in new ways. Restorative justice processes are seen as opportunities to build social capital, especially when the most significant persons and people who can act as resource person are included in the process. They are also said to be good opportunities to build human capital. Carrying out reparative work, for example, is seen by Bazemore as an occasion to be 'actively involved in roles that allow them to gain valuable skills and practice 'being competent' (Bazemore & O'Brien, 2002 cited in Robinson & Shapland, 2008: 344).

#### *3.2.4. The link between restorative justice and desistance in practice*

Robinson and Shapland looked at the materials based on the observation of 280 conferences (no victim-offender mediations) and post-restorative justice interviews with victims and offenders who had participated in a conference. They tried to discover to which extent the theoretical potential of restorative justice for desistance became visible in the conferencing practice they studied (Robinson & Shapland, 2008: 346-352). It is a rare and most interesting attempt to discover empirically which mechanisms in victim-offender mediation and conferencing are at work when it furthers desistance.

Looking at what becomes visible of the reintegrative shaming theory Robinson and Shapland saw several problems in practice. RST is based on a series of pre-established steps. In practice conferences are dependent on the experiences and expectations participants bring to the process even if conducted according to a script. What actually is shown, is thus a much more 'messy' reality than what RST prescribes. Moreover, RST seems to assume that victims will always show high emotion in the context of a conference because of the harm done to them. In their own observations, Robinson and Shapland note that there was great variation in victims' reactions to the crime. Although 65 % of the victims observed were rated as affected 'a lot' or 'quite a lot' by the victimisation, 42% of the conferences were rated as 'not at all' emotionally intense and only 13% as 'quite' or 'very' emotionally intense. Finally, Robinson and Shapland nuance the idea in RST that there is a need to induce emotions of guilt and remorse via the shaming of significant others, or that – even if the offenders have understood already before the conference that they did wrong - the emotions felt are still vague and not yet framed as guilt/shame. In their observations, many participants started the conference ready to openly admitted that they had caused harm and they showed feelings of shame, remorse of guilt. Taking into account that conferences are voluntary and that they are only

held when the offender admits the offence, they think that a significant proportion of the participating offenders is already thinking about desistance when they agree to conferencing. The conference then provides, at least for a part of the offenders, a safeplace or a forum where these emotions ‘might be constructively expressed and/or discharged, instead of induced’. In this way, a restorative justice process can provide a sense of closure to offenders, as has been noticed in the observations. This process can be supported by an apology, actual reparation or a symbolic reparation, for example by changing one’s lifestyle.

Looking at the potential for building social capital, Robinson and Shapland saw examples of establishment of social connections, for example when an offender supporter or even the victim offered practical help (to find a job or accommodation...), or when an offender re-established connections with family members after a period of estrangement. Often, however, it was difficult to find supporters for offenders. They observed also occasions to organise reparative activities, to give something back, through financial reparation, and more often via indirect reparation, for example through voluntary work. But again, although this was often discussed, it was rarely realised in actual agreements, because the offender was in prison, or because of other practical obstacles. Looking at the potential for building human capital (individual skills), Robinson and Shapland saw examples of agreements containing the requirement to follow a programme to improve skills and/or qualifications. Often, however, there was a lack of relevant programmes (especially in prison) and/or a lack of knowledge about which programmes are out there. Also it was difficult to make decisions, as at the time of the conference the offender was imprisoned or it was not clear whether he would go to prison or not. Building on the idea that at least a proportion of the offenders taking part in a restorative process are already in a mindset of openness to the idea of desistance, the RJ process may be an extra motivation to tap into other opportunities of rehabilitative help. Inversely, in absence of such opportunities it may become difficult to maintain the momentum on the path towards desistance.

Robinson and Shapland hypothesise, based on their observations, that ‘among offenders agreeing to take part in restorative justice, there will be a significant proportion who are already thinking about desistance and whose motivation to take part is explicable with reference to a decision, or a desire, to desist’ (Robinson & Shapland, 2008: 348). Taking into account that participation in mediation and conferencing is on a voluntary basis, it becomes plausible then that offenders’ motivations to take part point to elements they see helpful for their desistance path. Therefore, the outcomes of research on offenders’ motivations to



participate in restorative justice offers a list of factors to envisage when one tries to discover mechanisms within RJ supporting desistance. Equally, research on offender satisfaction which goes beyond general levels of satisfaction, could be interesting, as it may point to elements of RJ offenders have found helpful in their journey to a crime-free life.

### *3.2.5. Research on offender motivations to participate in restorative justice*

Offenders' decisions to take part in a restorative justice programme are multi-dimensional. A key motivation is that the process offers the possibility to enter into communication with the victim. Related to that, offenders indicate that they want to take responsibility for their own actions, explain things, express their feelings, apologize to their victims for the harm they caused, or that they want to restore the contact with the victim. This is mostly the case when the offender and the victim knew each other. The communication is also linked to the desire to have a say in how the problem would be resolved for the future. Another key motivation is to restore or help the victim. Related to that offenders speak of their wish to do something for the victim, to answer questions, to listen to the victim or to pay compensation. Some attend because they feel it is their duty to do so and other want to fix practical issues. Getting the whole experience behind them, or in other words finding closure, is another recurring motivation. Many motivations are directed towards the other person, and others are directed to the offenders themselves (Gyokos & Krisztina, 2010; Umbreit et al., 2004; Shapland, Robinson & Sorsby, 2011). Especially when there is a link between participating in a restorative justice process and the outcome of a judicial decision, offenders also mention that they hope it will prevent the case to go to court, or prevent a decision of imprisonment, or that it will support an earlier release from prison (Robinson & Shapland, 2008). From a victims perspective, this attitude provokes questions about the authenticity of the participation, and about the instrumental use of the victim for the sake of the offender, and whether this is acceptable. From a desistance point of view, however, this might in fact be a quite smart motivation. Preventing the case to go to court may avoid the stigma of a criminal record, for example. Getting out of prison and preventing to be sent to prison puts the offender in a position in which he/she can practice his/her wish to desist, this is in the community.

### *3.2.6. Research on offender satisfaction after participation in restorative justice*

Also looking into reasons for offender satisfaction may uncover factors supporting desistance. Many evaluative studies report very high satisfaction rates for offenders. Offenders are also often more likely than victims to be satisfied with the process as well as with the outcome

(Daly, 2001: 21; Dignan & Lowey, 2000: 38; Latimer, Dowden, & Muise, 2005: 136; Lyness et al., 2006: 143; Umbreit, Coates, & Vos, 2004: 287). Much less research is however done about the specific reasons why offenders are satisfied.

Miers et al. (2001) interviewed 43 offenders from different restorative justice programmes in the UK and asked them about the process of the intervention. The age of the offenders varied between 12 and 26 years. The results showed that more than four in five offenders, regardless the form of intervention they had participated in, felt listened to, allowed to have their say and claimed to be treated respectfully (p.37). They stressed that ‘someone spent some quality time with me’ and that ‘they didn’t judge me’ (p.38). Also O’Mahony & Doak (2004) find in their study in Northern Ireland that the offenders felt being treated fairly. The offenders also emphasized the easy talk with the mediator (p.16). The researchers observed in total 29 restorative sessions for young offenders, of which 19 were restorative conferences and 10 restorative cautions. The study of Maruna et al. (2007: 35) and the study of Hoyle, Young and Hill (2002) confirmed these findings. Hoyle et al. (2002: 1) observed different restorative processes of the Thames Valley Police restorative cautioning and interviewed the great majority of the participants. They concluded that the majority of the participants felt that they were treated fairly. The researchers also pointed out the importance for the offenders to be able to say what they wanted to say at the meeting and to have the same opportunity as everyone else to speak. It was important that the others listened to them with respect as well (Hoyle et al., 2002: 27).

The results of Miers et al. (2001: 38-39) showed that the restorative justice programme helped four in five offenders to understand that what they did was wrong and to understand the implications of reoffending. Most of the participants also agreed that it helped them to recognize the effects of their offending behavior on others, including their victims. The fact that the conference helped them to understand the impact of their deeds, is also confirmed by other studies (O’Mahony & Doak, 2004: 16; Hoyle et al., 2002: 30). The offenders recognized the importance of saying sorry as well and some appreciated the possibility to answer the victims’ questions (p.39). A few offenders saw the restorative justice programme as a way to turn the page and to move on (p.37). Some offenders spoke of the practical help they received, such as helping them get back into school and about how the intervention helped repair the relationships with their parents (p.38). At last, also the reaction of the victims seemed to be important for the offenders. The offenders were positive about the intervention when they spoke of the victim being nice and understanding them (p.40).

Finally, the study of Hoyle et al. (2002: 28) drew attention to the role of the facilitator. Over three-quarters of the adults were pleased with the work of the facilitator. In comparison, only 58% percent of the juveniles found so. According to Hoyle et al. (2002) the difference could be due to two facilitators who treated adults with more respect and friendliness than juvenile offenders.

### **3.3. Conclusion**

The overview presented here contains a whole list of suggestions of what may be in the black box of restorative processes which can be helpful for desistance. In order to really know what the persons concerned has helped to desist, a next step in the research is however needed: empirical work during which ex-offenders provide us with information on their desistance journey and on how participation in a mediation or conference has contributed (or not) to that journey. The next chapters provide an account of that empirical endeavour.

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## Chapter 4 – Austria

Veronika Hofinger

### 4.1. Victim-offender mediation in Austria

The main RJ practice in Austria is victim-offender mediation (VOM), the ‘Tatausgleich’.<sup>1</sup> After a pilot project with juveniles in the 1980s and its legal implementation for juveniles in 1988, pilot projects for adults followed in the 1990s. Since 2000, VOM for adults is implemented as a diversionary measure in the Austrian code of criminal procedure.

All VOM cases are referred to Neustart, a nationwide provider of judicial services (such as probation, help upon release, community service). It is a private organisation financed by the Ministry of Justice via annual contracts. In each of the nine provinces of Austria, Neustart has a regional office.<sup>2</sup> Neustart works with professional mediators only, having approximately 80 active mediators. One fulltime equivalent is supposed to deal with 180 referred indicted persons per year.

VOM in Austria exists as diversionary measure only. While a referral is legally possible until the end of a criminal proceeding, cases are usually (at 85%) assigned to Neustart at the pre-trial stage by the public prosecutor. A small percentage of the cases (15%) are referred by judges, mainly from the district courts (BMJ, 2012: 67).<sup>3</sup> The yearly number of referrals varies from 9,424 in 1999 to 6,354 in 2013 with a steady decline in numbers during the last decade.

The mediators are reporting the progress made as well as the outcome of the conflict resolution to the public prosecutor/the judge. This report includes information on the course of events during the mediation (only in very broad terms, such as: ‘the offender has taken on responsibility and apologises for the harm caused; the victim accepted the apology’), the agreement between the parties (e.g. a compensation fee), if available the fulfilment of the agreement (e.g. the payment of the compensation fee), and the judgment by the mediator, if he

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<sup>1</sup> There is little (recent) experience in group conferencing which is not relevant for this project.

<sup>2</sup> In addition, Neustart operates not fully equipped regional offices with bureaus to conduct interviews and meetings. In total, there are 35 offices all over Austria (with an area of 84,000 square kilometres and a population of 8.5 million people).

<sup>3</sup> For an overview of the processing of VOM cases see also Annex 1.

or she considers the mediation as positive. In 2013, 75% of the cases referred were discontinued after VOM.<sup>4</sup>

VOM in Austria is not restricted to either juveniles or adults but open to all offenders. The majority of the clients are adults. In 2012, 14% of the VOM clients were juveniles (14 to 17 years old). Although not excluded by the criminal code, few offenders with previous conviction(s) are referred to the 'Tatausgleich'.<sup>5</sup>

What are the preconditions for a case to be eligible for VOM in Austria? The public prosecutor (or the judge) may propose a case for VOM unless preventive considerations oppose to it; unless the offence is punishable with a prison sentence of more than 5 years (juveniles: 10 years); if the guilt of the suspect is not considered as 'severe', meaning that the guilt and unlawfulness of the offence surmounts the typical and is of higher grade; and unless someone has died in consequence of the crime. Other legal preconditions are the consent of the victim and the willingness of the suspect to take responsibility, to compensate for damages, and to accept further conditions.

The main offence group in the Austrian 'Tatausgleich' are bodily injuries, namely 76%, of which two thirds are assault and battery (BMJ, 2012: 73). Other reasons for referral are property damage (11%) and threatening (11%). According to the law, petty crime should not be referred to VOM.

Austrian VOM is dealing with different types of *conflicts*. The dominant focus of the RJ practice lies within conflict resolution meaning that a case should be cleared up in all aspects (personal, emotional, material). Neustart distinguishes several types of conflicts for which mediation is provided.<sup>6</sup> For the present study, the two main conflict types were selected, namely situational conflicts and cases of partner violence.<sup>7</sup>

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<sup>4</sup> A study (Hofinger & Neumann, 2008) showed that mediators classified two thirds of the cases as successfully completed, whereas almost ¾ of the cases were dismissed. This means that public prosecutors/judges sometimes close cases even if the outcome of the mediation according to the social workers was not (yet) fully successful, e.g. in cases with an 'open' outcome.

<sup>5</sup> The vast majority has no criminal record: only 11% of a sample of more than 1.000 VOM clients in 2008 had (a) previous conviction(s) (Hofinger & Neumann, 2008).

<sup>6</sup> In 2013, 41% were situational conflicts, 22% partner violence cases, 9% conflicts within family/relatives, 6% neighbourhood conflicts, 4% conflicts at work or in an educational setting, and 14% conflicts in other relationships/settings.

<sup>7</sup> Situational conflicts take place mainly in public, e.g. in a pub, during a festival, on the street. Typically, offender and victim did not know each other at all or only very little before the conflict and will not or barely meet again after the mediation. For more information about the selection procedure see below.



In Austria, a relatively high number of partner violence cases are referred to VOM compared to other European countries where this kind of cases are often excluded from VOM. Neustart has developed a specific methodology and special guidelines including a risk assessment tool to deal with these cases.

What is the course of events during a typical Austrian VOM? The standard method starts with separate single interviews with the involved parties to assess the suitability of the case for RJ and to prepare the mediation session. If both agree to search for an out-of-court solution, the mediation session takes place. The mediation itself is then mainly direct. Only when the victim accepts VOM but refuses an encounter, indirect mediation is organised. Sometimes family members (parents), lawyers, or representatives of women's associations join the meeting.

In situational conflicts a special method called 'tandem' can be used. These VOMs do not start with individual interviews but both victim and offender, are in the same room right from the beginning. The victim or the offender is telling his or her story to the mediator. The conversation begins between the mediator and one of the conflict partners while the second conflict partner listens. Once a basis for a constructive conflict resolution is established, then direct exchange between conflict partners can take place.

While one mediator deals with 'normal' VOM cases, a male and a female mediator work together in cases of intimate partner violence. Neustart has developed a special methodology for partner violence cases that covers two specific settings. Both methods start with separate single interviews with the involved parties to assess the suitability of the case for RJ and to prepare the mediation session. The first method, entitled 'working in teams of two' ('Arbeiten zu zweit') entails two mediators to be present during the whole process and also during the single talks.<sup>8</sup> If this method is applied, the mediation session is not held immediately after the single talks.

In the 'mixed double' ('Gemischtes Doppel') these separate meetings often take place at the same time, but in different rooms. Right after the separate meetings, the partners and the two mediators immediately get together for the mediation session. The core element of the 'mixed double' is the 'mirror of stories' ('Geschichtenspiegel'): the mediators tell each other what

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<sup>8</sup> Internal guidelines state that it is also possible to conduct the single session with one mediator only; during the actual mediation session both mediators have to be present.

they have heard during the previous single talks, i.e. they mirror the stories of the partners. Pelikan (2015) describes it as follows:

*'The mirror of stories entails a rather sophisticated and elaborated professional design that aims at bringing into effect the two main working principles of mediation: recognition and empowerment. At the beginning of this session the two mediators are facing each other, while the two partners remain also on opposite sides, each sitting next to their mediator. The mediators tell each other what they have heard during the previous single talks: the story of the relationship, the story of suffering violence and of acting violent, of threatening, hitting, constraining the other's freedom. Thus they mirror the stories they have been told and present these mirrors to each other. The partners are asked to listen without interfering, and only afterwards they have the opportunity to comment, to correct and to modify the rendering of their story by the mediator. This is also the beginning of the immediate exchange of the partners – about their perceptions, and their expectations.'* (Pelikan, 2015)

#### **4.2. Relevant research on desistance and restorative justice**

Several national research projects dealt with the Austrian VOM practice, with a focus on domestic violence cases and/or on the impact on victims (Pelikan, 2000; Altweger & Hitzl, 2001, Pelikan, 2010; Pelikan, 2014). There is no previous national research project aiming explicitly at the effects of RJ on the desistance process.

Pelikan summarised the results of her research on VOM in domestic violence cases in 2000 that was based on the observation of 30 mediation sessions followed by interviews with the participants: 'Men don't get better, but women get stronger.' (Pelikan, 2010: 49). Ten years later, she conducted a study combining qualitative and quantitative methods<sup>9</sup>. On the basis of this new study she reformulates her former summary and concludes that some men do change their behaviour after the mediation:

*'As an effect of VOM two major changes take place. There is the empowerment of women – mainly as a reinforcement of changes that have already been brought on the way (...) And we see also that men do change – sometimes – and as an effect of participating in the VOM-effort.'* (Pelikan, 2010: 67)

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<sup>9</sup> Out of 900 questionnaires, 162 were returned to the researcher; 33 mediations have been observed by the researcher and the involved victims were interviewed.

Pelikan attributes this positive development to changes in the legislation against domestic violence and, more broadly, to a change of mentalities: the aim of keeping violence out of intimate relationships has acquired wider acceptance within the Austrian society.

Two quantitative evaluations based on more than 1,800 criminal records of former VOM clients have shown that (re)conviction rates after successfully completed VOM are very low compared to recidivism after court sanctions (Hofinger & Neumann, 2008; Hofinger, 2014). Less than 15% of offenders who successfully completed the mediation process were criminally convicted in the following three years compared to 41% of offenders who had initially been sentenced in court because of battery/assault. Clients who were referred to VOM after being violent to their partner had even lower recidivism rates, namely about 10% (Hofinger, 2014: 92). While these results are encouraging for the referring agencies as well as for the mediators, the numbers do not explain how VOM might influence recidivism. Only qualitative data, as used in the present study, can throw light on the impact that RJ can have on desistance.

### **4.3. Empirical basis**

#### *4.3.1. Sampling procedure and sample characteristics*

See also graph below.

The aim of the present study was to select a group of former VOM clients who did not reoffend after the mediation in order to ask them about their experiences with RJ and the impact the mediation had (or did not have) on their lives. We firstly selected cases in which the mediation process has been successfully completed in 2010.<sup>10</sup> Secondly, we selected cases of face-to-face mediation only, because the encounter and the settlement with the victim is a very important element of restorative justice.

The focus of this project is on so-called ‘situational conflicts’ and cases of partner violence, the two main types of conflict in Austrian VOM, firstly because they have a higher share of face-to-face mediation compared to other types of conflicts. Secondly, other conflict types might be without (available) victim or include e.g. juvenile sprayers and other forms of

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<sup>10</sup> The selection criterion was that the mediation was classified as successful by the mediator, i.e. that the process was positively completed – the offender took responsibility and agreed to compensate for the damages or to fulfil certain obligations. A successful VOM is in each case terminated by a signed agreement that is sent to the public prosecutor, together with a short report of the mediation. As a general rule, the public prosecutor or the court dismisses these cases.

damage to property. Thirdly, Neustart has developed a specific methodology to deal with partner violence cases which adds value and offers new insights for our research project.

In a next step, we made a regional selection. While previous research was mainly concentrated on Vienna and neighbouring regions, this project included four regions (out of nine): Vienna, Lower & Upper Austria, and Tyrol. We preferred clients who lived in or near cities that could be reached by the researcher within the available travel budget. By including different regions we expected to diversify the population and the methods applied by the mediators.

From all the cases that fit the selection criteria Neustart drew a random sample of almost 800 cases, divided evenly between situational and partner violence. The criminal records of 781 clients were then checked in July 2013. Only clients with no (re)conviction after 2010 qualified for our sample. As desistance should preferably be studied amongst offenders with a history of persistent offending (Laub & Sampson, 2003: 22), we examined the criminal records to select clients with a history of criminal offending. However, the Austrian diversionary model of VOM deals to a large extent with first time offenders.<sup>11</sup> We therefore had to include clients without criminal history in the sample (see Results).

The next step was to select the clients to be contacted by the mediators from the Neustart database.<sup>12</sup> The database was checked for the following criteria:

\* face-to-face mediation (no standardised information available, had to be verified in each case „by hand”);

\* additional information e.g. on previous unofficial delinquency, such as hints that there had been a history of violence;

\* no VOM or community service sentence after 2010.<sup>13</sup>

In a first round, 54 offenders who met the selection criteria were targeted. We asked the mediators who were responsible for the mediation in 2010 to establish contact with these

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<sup>11</sup> Only 13 out of almost 800 cases had a (not yet deleted) criminal conviction before the VOM and no reconviction afterwards. (In our final sample of participants, only three have been officially convicted before their referral to Neustart.)

<sup>12</sup> On each case an electronic file is kept. The mediation files are electronically saved in the Neustart database. The files contain information on the client, the offence, and notes of the mediator on meetings, process, positions, claims, and agreements.

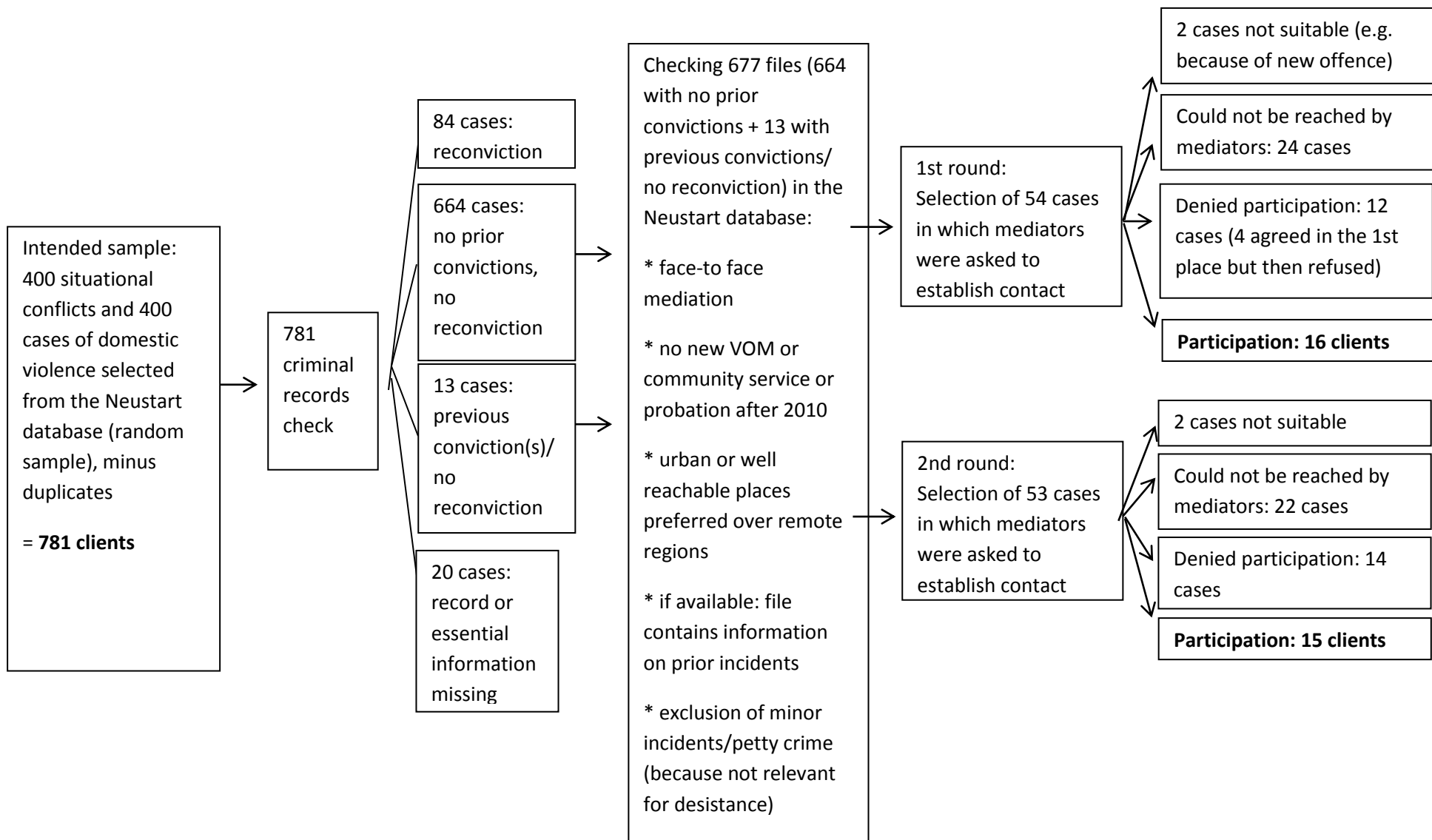
<sup>13</sup> These sanctions are not registered in the criminal records as they are pre-trial diversionary measures but can be found in the Neustart database.

clients and to ask them to participate in an anonymous interview (for details of the selection procedure: see below). A second selection round of the described procedure was necessary to reach our goal of 30 interviews. Finally, we were able to lead 31 interviews (15 situational, 16 partner violence) with former VOM clients in Austria.<sup>14</sup>

As it turned out to be difficult to find enough participants who fulfilled the selection criteria mentioned above, we did not take sex, age, and nationality into account. In the final sample, we had seven people with ‘migration background’ (interviewee or his/her parents immigrated to Austria), four women, and two people who were juveniles (aged 14-17) at the time of the VOM as well as two ‘young adults’ (aged 18-21).

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<sup>14</sup> It turned out that one of the interviewees had a criminal conviction that was overlooked in the selection process. This man was not removed from the sample because he had undergone a change process: one year before the interview, he had stopped his alcohol abuse and his violent behaviour.



#### *4.3.2. Data collection and evaluation*

Whenever possible, we arranged to meet the interviewees in person. When someone agreed to participate in the study but refused to meet personally (e.g. because of lack of time), the interview was conducted by phone (6 interviews by phone). More than half of the interviews took place in Vienna where we invited the clients to come to the office of the researcher or to meet in a coffeehouse near where they live or work. Interviewees in the other regions were offered to meet at the Neustart office or in a restaurant or coffeehouse.

The interviews were semi-structured, meaning that we followed an agreed list of topics (see Annex). On the other hand, we tried to keep the interviews very open to make the respondents tell their story without us suggesting answers or overemphasising the role RJ played in their lives.

With the agreement of the participants the interviews were recorded and then fully transcribed. In the evaluation and data analysis the researcher was supported by the supervisor in the project. We refrained from using software and we decided not to split up the single cases into codes and categories. We rather tried to understand the logic of each single case, and analysed every single case carefully, with an evaluation scheme<sup>15</sup> we had developed at hand. Half a day was also spent doing an in-depth (hermeneutic) interpretation of selected interview episodes in a team of three researchers in order to get a deeper understanding of the (latent) contents. Insights gained in this analysis were integrated into the final analysis.

Preliminary results of the evaluation were discussed with experts in the field of RJ and desistance, namely with experienced mediation practitioners, international academics, judges, and prosecutors at a regional workshop in Vienna in order to get feedback and input for the analyses.<sup>16</sup> Findings were also presented at a workshop in Leuven in April 2014.

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<sup>15</sup> See Annex.

<sup>16</sup> The Austrian workshop took place on the 3rd of April 2014 in the premises of the Austrian Ministry of Justice in Vienna.

#### 4.4. Findings

The Austrian research team had to deal with two specific challenges with regard to the central research question how RJ practices affect *desistance*, as a change process. On the one hand, the typical Austrian VOM client has never been a persistent offender involved in a criminal lifestyle – quite the opposite: most clients do not have a history of criminal offending but are first-time or on-off offenders. Offenders referred to VOM are on average better-educated and socio-economically better off than offenders under probation or in custody (Hofinger, Neumann, 2008: 30). On the other hand, the primary goal of the Austrian VOM is actually not altering the offender but resolving conflicts and fostering reparation. Furthermore, and in contrast to probation,<sup>17</sup> it is not a long-term intervention – indeed some VOMs are dealt with on a single day. Taken these aspects together, it is obvious that one should not have too high expectations towards the potential of the Austrian VOM initiating or supporting desistance processes.

Nevertheless, our empirical data add value to the project, firstly because we were able to find a group of clients who were desisters with a history of delinquency and/or substance abuse (according to their criminal records or their entries in the database of the mediation services). Secondly, because our data provide valuable insights into the effects of RJ on offenders in general, including first-time offenders. Altogether, we identified four types of cases:

1. Desistance (n= 5)
2. Elements of change/ learning effects (n= 12)
3. Adequate management of escalated conflicts (n= 8)
4. No positive effects (n= 6)

##### 4.4.1. *Desistance*

In our data we found a small but interesting group of former clients who can be called ‘desisters’. These men had a history of violence and/or alcohol or drug abuse and went through a substantial change process. For some, but not for all of them, the mediation was an important experience and relevant to their change process. In the following we want to answer

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<sup>17</sup> While there is a large body of desistance literature that focuses on the effects of crime reduction programmes and probation on desistance and prisoner reintegration (e.g. Rex, 1999; Farrall, 2002; Burnett & McNeill, 2005; McCulloch, 2005; Deirdre & O’Donnell 2008, McNeill & Weaver 2010), there is to date little that looks at the intersection of RJ practice and the lived experience of desisting individuals.



the questions, how the participation in RJ influenced their desistance journey and which factors within this RJ practice supported positive subjective and social changes that helped initiate or maintain desistance from crime.

In this group we found three different ways RJ influenced the desistance process. Firstly, RJ in combination with the incident itself and the private or official reaction to it initiated a change process that led to desistance from crime. Secondly, RJ was supportive in an on-going desistance process. And thirdly, RJ seemed not relevant for the desistance process, but other factors or changes initiated desistance from crime.

#### 4.4.1.a. The incident itself, the reaction to it, and its processing via VOM initiated change

We want to present the examples of two young men who were able to end their involvement in a criminal gang after VOM. Several factors triggered their wish to change, starting with the incident itself and the shock over the escalation and one's own misbehaviour. Although the two youngsters were involved in a lot of violent and illegal behaviour before, the incident that led to the mediation was out of normal range. In both cases, the victim was badly hurt and could have been hurt even worse, indeed one victim had almost died. The official reaction – being held accountable by the police and being afraid of a criminal trial or even of going to jail – undoubtedly left an impression on these youngsters who were delinquents but not officially convicted criminals. The mediation provided a good framework to deal with the incidence and its consequences and thereby new perspectives became visible. Therefore, the incident itself, the police's and their parents' reaction to it, and the mediation *together* triggered their wish to change.

Which factors within the mediation supported the positive subjective and social changes that initiated their desistance from crime? One of the two young men opened the interview – without any suggestion – saying that he had gone through a genuine change process. He himself described the mediation as the initiating turning point. He stressed how important it had been that the mediator treated him with fairness and respect, not labelling him as a criminal but giving him the possibility to present himself like he really was, 'to leave my impression', as he said.

The other client also stressed the good atmosphere at the mediation services. Apart from the fair and unbiased treatment, for both young men, the meeting with the victim played a crucial role in their change process. In this well-prepared and well-guided meeting with the victim,

they realised what they had done to a ‘nice’ and ‘normal’ person; they were (en)able(d) to change their perspective and to develop empathy with the victim. The following lines from the interviews give some impression of their reports:

*‘I wanted to get to know his (the victim’s) point of view. (...) And then I thought, oh shit, you really made a mistake. This guy is really nice, he’s fully okay. Why the hell have you done this? (When the victim gave an account of the incident), I thought, hey man, why did I attack such a nice person? Why didn’t I talk to him, why did I beat him up right away?’ (client 12 situational conflict, hooliganism, substance abuse)*

*‘My whole attitude towards life has changed. I approach things differently now. (During the mediation) I put myself in the victim’s place. I asked myself: Do I want this to happen to me one day? I then started from there, saying: I don’t want something like this to ever happen when I am around.’ (client 1, situational conflict, hooliganism, substance abuse)*

The narrative of client 1 also contained typical elements of the so-called ‘redemption script’ as described by Maruna (2001): past offending behaviour is explained by the bad influence of his former peers. Now as he has changed he wants to share his positive experience with others and give back to the community – what Maruna calls ‘generativity’. Everything seems to make sense now – the offence was ‘maybe even a good thing from today’s perspective because it allowed me to terminate this (involvement in hooliganism).’ His narrative is future-oriented and overly optimistic: ‘Now, life is just great all the time.’

Leaving a criminal peer group is not a single event but a process that needs to be supported in its maintenance. The two young men had both a supportive environment, e.g. a father who believed in his son, or a girlfriend who was helpful in this process. Both youngsters were able to end their beginning criminal careers with RJ playing a central role in this process.

#### 4.4.1.b. RJ as support in an ongoing desistance process

We also categorized two examples of domestic violence as desistance. Those two offenders had severe alcohol problems and both were capable of ending their abuse. As violence had only occurred when they were drunk, no further escalation of conflicts occurred since they had stopped drinking. One of them was especially grateful for the support he received during VOM, because the mediation opened up the possibility to start repairing the damaged relationship with his wife, while he stopped drinking before.

*'Without Neustart (the mediation service) it would not have been possible to talk with each other at that point in time.'* (client 25, partner violence, alcohol abuse)

It is important to mention that the mediators did not encourage his wife to quickly forgive her husband, 'it was not like: bring her a bunch of flowers and everything is fine again', as this client states with approval. On the contrary, the relationship has been 'reanimated', as he calls it, very slowly. His wife waited about two years before moving in together again. She drew a very clear red line: If you beat me, you'll lose your family. If you don't control your alcohol abuse, I am not willing to stay together anymore. She was supported in her clear and firm attitude by the mediators – her empowerment appears to be an important factor with respect to the desistance process of the offender.

Neustart also supported this client to find a psychiatrist who then helped him to deal with his addiction. It is difficult to disentangle the different aspects that were helpful for him. When the interviewee was asked what supports him in his desistance process he answers:

*'That's a very difficult question. I think it was the whole process together, not 100% Neustart or 100% the therapy.'* (client 25, partner violence, alcohol abuse)

This respondent is convinced that going to court would have destroyed what he had achieved so far, namely that he had not been drinking for months. Therefore, he fully appreciated the possibility of an out-of-court settlement. Once the desistance process has been set in motion (primary desistance), the mediation and its effect of re-establishing a basis for communication and repairing relations can be very supportive for secondary desistance – the maintenance, the *staying straight*.

The other client claimed that his desistance from alcohol was only due to himself and his strong will. He was a typical example of spontaneous desistance.

*'This is how I am: If I say that I want to push something through, I do it. (...) Giving up is a very, very bad option for me. (...) Other people should not be judged by my example because I am different. This may sound arrogant, but I know that I am different and that I think differently.'* (client 4, partner violence, alcohol abuse)

He barely mentioned in the interview that he has become a father at that time or that he had two counselling sessions dealing with his alcohol addiction. He claims that it was only his

decision to stop his alcohol abuse that counted and that he was such a strong-willed and strong-minded personality.

VOM did not make him change as he had stopped drinking a long time before the mediation, but it supported him nevertheless, showing him that he was on the right path. Instead of a punishment that might have destroyed what he'd built up so far, the mediation was supportive and encouraging.

*'Of course, (the mediation) has encouraged me. (...) It was a possibility to prove that I am actually changing. This has taken a lot of strain and pressure from me. (...) It happened at the right moment and it motivated me to stay on the track.'* (client 4, partner violence, alcohol abuse)

#### 4.4.1.c. Mediation not relevant for the desistance process

Another young man we classified as desister has stopped offending because he became a father. The mediation itself seemed not important for him at all, while a conviction might have changed his future considerably. When he became a father, his routine activities changed, as he stopped going to the bars at night. He was a single father rearing up a small child and so he felt very much responsible for his little daughter.

*'If my daughter hadn't been here, there would have been no reason for me to stay at home, to hang out less. I don't know how things would have evolved without her. But (as a single father) you are always at home, you cannot go out, you have a baby at home. (...) I really wanted to have this child, and then I was happy, when she was there.'* (client 25, situational conflict)

The last sentence highlights the importance of the subjective meaning of the birth of his daughter (see Giordano et al., 2002: 1038ff). He said that he had felt absolutely ready to take responsibility for a child at that point in time.

#### 4.4.1.d. Summary of factors initiating/supporting desistance

What factors within VOM initiating and/or supporting desistance can be summarized? The respondents mentioned the fair and unbiased treatment by the mediator as very important. Being treated with respect and not being labelled as a criminal stimulated them to prove that they were 'better than that' and strengthened the positive sides of their identity. In accordance with desistance literature (e.g. Ward & Maruna 2007: 127), it proved helpful to deal with past

wrongdoing in a future-oriented way. The atmosphere during the mediation – as compared to the situation in court – and especially the confrontation with the victim in a well-prepared and well-guided mediation session allowed for a change of perspective that initiated a subjective change (that resulted in a change of social behaviour): They realised the harm they had caused and decided never to inflict such harm on another person again.

In some cases, VOM was able to initiate or support social change directly. Especially in cases of domestic violence, an important function lies in its potential to re-establish a basis for communication. The mediation can be a first step or a supportive element in repairing a damaged relationship. Special methods applied in domestic violence cases, such as working with two mediators of opposite sex in a setting called ‘mixed double’<sup>18</sup>, have the potential of creating an atmosphere in which troubled couples may find a new start or way of communicating. This does not imply that the relationship is saved by all means but that the (ex-)partners are supported in dealing with each other (separation can be one possible solution). These respondents explicitly said that an indictment in court might have destroyed their (very successful) efforts to go straight. Instead, they were supported and encouraged on their desistance journey that might have begun long before the mediation.

With regard to the small size of the group of desisters in the Austrian sample, it is impossible to generalize for whom and under which conditions which factors are relevant. Nevertheless, it can be stated that the two young men involved in a situational conflict were more amenable to substantial subjective changes initiated by RJ, namely by the meeting with the victim, which initiated a real change of perspective. For the interviewed adult offenders with a history of alcohol abuse, on the other hand, the mediation was more an important support in their on-going desistance-journey rather than a trigger for change.

#### *4.4.2. Elements of change/ learning effects*

As described above, the typical Austrian VOM client has never adopted a criminal lifestyle and was never engaged in persistent offending. Therefore, major changes in behaviour may not be expected. The question applicable to the majority of the Austrian VOM cases would rather be: What impact can RJ practices have on offenders in general, including first time offenders and including other effects than desistance in the narrow sense of the meaning? Did the participation initiate or support learning effects and smaller changes in the lives of the

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<sup>18</sup> See page 56.

interviewees that helped them to stay straight after the mediation? Which factors within this RJ practice supported the clients not to get involved in crime and punishment again?

Again, it is very different how important the VOM appeared to be for the respondents. While it was a really important event for some of them, it had a marginal meaning for others. What was important for every interviewed client was the benefit of the Austrian VOM that it permits to settle a conflict without being indicted as a criminal in court and without criminal record. While desistance theory reflects about possibilities of de-labelling rituals (Maruna & LeBel 2003; Maruna et al. 2004; Maruna 2011), we can confirm the benefit of not being labelled as a criminal in the first place. The mediation was regularly seen as opening up a 'second chance'. Clients became more prudent, more reluctant to get involved in trouble again. They described themselves as more calm and mature as they've learned their lesson. They presumed that they would not be offered a diversion measure a second time.

*I: 'Things did not change so much since then?'*

*'Oh no, they did change. I am more mature now. I do not want to get involved in fights anymore. I turn away when someone verbally attacks me, I do not even look at him, I don't want to fight. I have learned my lessons. It has been a warning. If I do something like this again, the consequences will be more severe.'* (client 5, situational conflict)

The fair and respectful treatment by the mediator turned out to be very important for this group of cases as well. The example of a woman accused of aggravated assault – she stabbed a knife in her husband's back – showed that VOM can have particularly strong effects in more severe cases. Her statement illustrates the importance of the encounter with the mediator:

*„(She treated me) respectfully. There was no judgement. I was reproaching myself the most. And it did me really good – I mean nobody approved what has happened, of course. But when I explained the whole story to the mediator, she kind of understood how it could actually have happened. And this was so helpful. It was important that in the end I was able to forgive myself and to accept that I've made a mistake but that I'm not a monster.'* (client 21, female, partner violence)

The interviews indicate that nobody really likes to attend the mediation in the very beginning. It's an unpleasant event and many people do not have much knowledge about what to expect, so they feel a certain tension. Obviously, the typical client is surprised by what is finally happening during the mediation. They were positively surprised how they were treated and

how positive and relaxed the atmosphere was. In most cases the mediators were able to make use of the tension felt by the offender (and the victim) and to transform it into a constructive spirit. Only in this spirit, some respondents claimed, it is possible to really take over responsibility.

The mediation takes place against the background of a criminal trial, 'in the shadow of Leviathan' (Spittler, 1980). All participants are aware of the fact that in case of failure the case will go to court. The respondents compared the situation at Neustart with the situation in the courtroom. While it was possible to really work on and clear the conflict in the framework of a mediation, this would not have been possible in court. The role of the neutral mediator as a person who really facilitates resolving the conflict is reflected in the following statements.

*'The conversation was good, definitely. It's very different in court: there, you are the accused person and the other one is the plaintiff. That's very different from mediation where a neutral person helps resolving the conflict. It was important and satisfying for me, and it made me realise how stupid my behaviour has been.'* (client 23, situational conflict)

*'There are things that you can bring up during a mediation, which cannot be talked about in court. During the mediation it is possible to really express yourself, to talk with each other.'* (client 5, situational conflict)

These examples of successful mediations show that in such a setting real conflict resolution can be possible. Several respondents explained that the mediation helped restoring the relationship with the victim.

*'The mediation was significant because it opened up the possibility to fix our relationship – I don't think this would have been the same if we had gone to court.'* (client 21, female, partner violence)

*'The mediators were able to bring a good interaction between me and my ex-wife. Before the mediation, we had barely spoken to each other. After the mediation, we started speaking with each other again.'* (client 18, male, partner violence)

Another important effect we observed was what we call 'the enhancement of the norm' meaning that the official (police) reaction to the incidence in combination with its settlement in VOM set a clear red line to some offenders who before thought that fighting on a Saturday night is just normal and fully acceptable or pushing a woman is no violence at all. One man,

for instance, reported that only during the mediation he fully realised the meaning of the norm: A man never beats a women.

*'It is still working in me. I still remember what (the mediator) has said. He told me: men don't touch their women. After this talk (we went to the other room where I met my wife) and I said to her (...): You might have felt something I did. I am a man, you are a woman. I may have pushed you, I may just take it as small pushing, but for you it is a heavy one.'* (client 18, partner violence, interview conducted in English)

Another interviewee talked about very concrete practical advice he got from the mediators, how to behave in risky situations and how to avoid escalation in the future. He, too, is still remembering these advices today, three years after the mediation.

Finally, most respondents told us that the mediation was a good possibility to bring to a close an unpleasant chapter – it was a starting point from where to move on, not only for themselves but also for the victim. The importance of future-orientation in the change process is also stressed in desistance literature (see e.g. Farrall, 2004). The already mentioned case of a woman who attacked her husband with a knife is a good example: The mediation helped the couple to clear the case in all aspects and, in consequence, to move forward. The couple is still together today, without any similar incidents since then.

*'Yes, (it was) absolutely (important that it was future-oriented). It is a settled matter now, even if I still think about it sometimes. (...) And it was also important for my husband that the issue was dealt with without criminal proceedings. As he might possibly not have talked about it at all, it was important to have the mediation where we had to talk about certain issues. This was important also for him in order to positively conclude this chapter.'* (client 21, female, partner violence)

#### *4.4.3. Adequate management of escalated conflicts*

In many cases, the Austrian VOM can be considered as adequate management of escalated conflicts, not more, but also not less. Within this group of cases, VOM did not initiate a change process but had other important functions such as the negotiation of a compensation fee and fostering reparation. While some willingly paid the compensation fee and were happy to give something back, others considered it more like a sentence to be paid, 'the most expensive slap in the face', as one young female interviewee called it without remorse for



what she had done. Her ex-boyfriend had treated her in such a bad way that she felt entitled to slap him in the face.

Some situational conflicts appeared to arise out of very exceptional circumstances, e.g. the case of a woman whose child was slapped by a stranger, an older lady who possibly had mental problems. The mother, in defence of her child, pushed and slapped the stranger. Obviously, she was not in need for change or at risk of reoffending but (over)reacted in an exceptional situation. During the mediation, the women settled the conflict. A new encounter between them is now unproblematic. In cases like this, it is very unlikely that a similar assault will occur between the two parties.

In addition, both examples show that occasionally cases of minor severity are referred to VOM.<sup>19</sup> Indeed, it is an important function of the Austrian VOM, being a diversionary measure, to divert such minor cases from courts and to avoid criminal labeling, social and legal stigmatisation, and other negative consequences of a criminal record.

#### *4.4.4. No positive effects*

Within a small group of offenders, we did not observe positive effects of the mediation. Those were mostly cases of domestic violence in which the offender played down the severity of the incident during the interview.<sup>20</sup> Even if RJ had no visible positive effect on these offenders, the majority of these cases didn't seem problematic in the sense that another measure would have been necessary to prevent further violence, because the couple is separated/divorced by now and the offenders had neither a new conviction nor did they self-report any other incidents.

In exceptional cases we had the impression that the mediation was just used to avert the prosecution without any positive effect. A few respondents did not feel sorry for their wrongdoing but were angry with their partner for reporting the incident to the police. When one interviewee claimed that he would 'avoid this to happen again by all means', he left the interviewer with the impression that he intended to avoid the reporting to the police, not the violence. In one case, a couple faked good understanding and full reconciliation during VOM but the woman disclosed in the interview – three years later – that they had been only

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<sup>19</sup> One could ask if they were not petty crimes that should have been discontinued without any further consequences.

<sup>20</sup> After all, it is very difficult to judge from a researcher's point of view how serious the incidence 'really' was. Some interviewees even claimed being not guilty of the accused offence although they had taken on responsibility during VOM.

pretending and that the violence did not stop after VOM.<sup>21</sup> Those cases show the limits of RJ in partner violence cases especially if there has been a long history of violence and power imbalance between the man and the woman.<sup>22</sup>

#### **4.5. Conclusion**

VOM in Austria is a well-established practice conducted by professional mediators. In contrast to Belgium and Northern Ireland, it is implemented as a diversionary measure only. In consequence, the offences dealt with are not as severe and the offenders referred to the mediation service are mainly first time offenders. This means that VOM in Austria is not primarily concerned with desistance but with restoration and restitution as well as with the regulation and resolution of conflicts. Nevertheless, the avoidance of reoffending and the possibility of inducing change processes through VOM is an important element, especially with juveniles.

Previous national research suggests that one can observe changes on the side of the victims (i.e. empowerment) and, in some cases, also within the offenders as an effect of participation in VOM (Pelikan 2014). The current study focused on positive examples of VOM in cases of partner violence (16 cases) and situational conflicts (15 cases).

How did the participation in VOM influence the desistance process and, more specifically, which factors within this RJ practice supported positive subjective and social changes that helped initiate or maintain desistance from crime? For the Austrian sample, we expanded our research question including not only desistance processes in the narrow sense but positive effects of RJ on offenders in general.

Based on our data, we identified four groups of cases, namely 1. cases in which RJ initiated or supported the desistance process; 2. cases in which (smaller) learning effects could be observed; 3. cases of adequate management of escalated conflicts; and 4. cases in which RJ had no positive effect on the offender. The analysis of the interviews shows that, especially with juveniles, VOM has the potential to initiate changes that could not have been triggered by a criminal conviction or another diversionary measure such as community service not least because the well-prepared and well-guided encounter with the victim was a crucial factor and

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<sup>21</sup> In this case, both partners were accused of assault and therefore sent to VOM. During the interview it turned out that we had encountered the ‘violent resistance’ of a victim of intimate partner violence (Johnson 2006: 1003).

<sup>22</sup> International project JUST/2013/JPEN/AG/4587 (financed by the European Commission) has developed guidelines for suitable cases of VOM in domestic violence cases.

served as a turning point. The proceedings and effects of VOM may open up or support the development of new perspectives as well as new orientations towards the future. Thereby substantial subjective changes can take place that again can lead to changes in social behaviour. We also found evidence that VOM can be supportive in an on-going desistance process when it facilitates true conflict resolution and helps to re-establish relations and strengthening social bonds – a key desistance factor (Laub & Sampson 2003).

For the typical Austrian VOM client the escalated conflict (the offence) and the reaction to it (police interrogation, fear of criminal trial and criminal record) is no trivial routine. On the contrary, most of our respondents were extremely relieved when they were offered an out-of-court settlement. For them, the mediation was a warning, a ‘second chance’ that allowed to solve the conflict/the problem ‘in the shadow of Leviathan’ without being officially labelled as a criminal. The fair and respectful treatment by the mediators strengthened the positive sides of their identity. The mediation allowed for the closure of a very unpleasant episode and for future-orientation.

Finally, we also found evidence that VOM works particularly well in cases that are more severe such as aggravated assault. Therefore, and according to the Recommendation of the Council of Europe concerning mediation in penal matters [R (99) 19], we recommend the expansion of RJ to other stages of the criminal proceeding in Austria.

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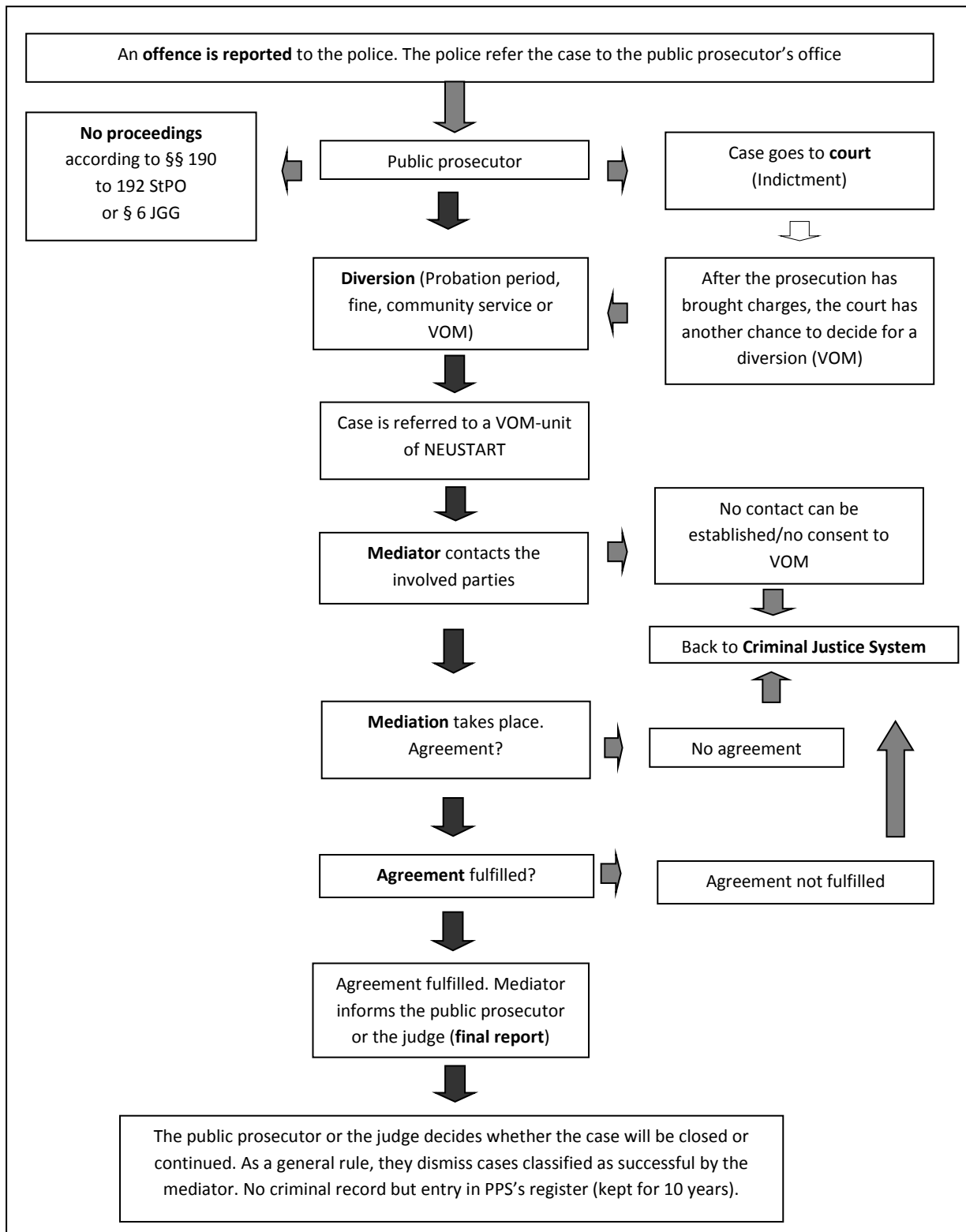
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## 4.7. Appendices

### Appendix 1: Overview of the referral and processing of criminal cases in VOM in Austria



## *Appendix 2: Interview guidelines in German (Leitfaden)*

Wir haben Sie kontaktiert, weil Sie vor einigen Jahren an einem Außergerichtlichen **Tatausgleich** (TA) bei Neustart teilgenommen haben. Wir machen nun eine Studie über die Einschätzung von ehemaligen Teilnehmern über diesen Tatausgleich.

(Ich würde mit Ihnen heute gerne über Ihre Erfahrungen mit dem Tatausgleich sprechen.)

**Anonymität, kein richtig /falsch; Ihre Erinnerung, Ihr Erleben zählt, interessiert uns. Können Sie mir erzählen, wie es zu diesem Außergerichtlichen Tatausgleich gekommen ist, wie der Tatausgleich verlaufen ist und wie sich die Dinge seither entwickelt haben?**

### **Vor dem TA**

Können Sie mir mehr über Ihre Lebenssituation vor dem Vorfall/ Tatausgleich erzählen?

Was hat zu der Anzeige und zum ATA geführt (wieso überhaupt Anzeige) – [Situation/ Lebensumstände]

Wie kam es überhaupt dazu, dass Sie einen ATA bekamen? Wurde das vom StA/Gericht vorgeschlagen, oder haben Sie da auch was dazu beigetragen?

Überrascht von Angebot oder erwartet/beabsichtigt?

Was war Ihre Motivation, daran teilnehmen?

Hatten Sie davor schon einmal mit Neustart zu tun? Mit Gericht, vorher schon Anzeigen, Wegweisungen etc.? Geschichte von Gewalt, Drogenmissbrauch? [Vorstrafen, Vorgeschichte, Wegweisungen]

Waren Sie damals auch immer wieder in Schlägereien oder drgl. verwickelt?

Kam es auch schon früher vor, dass Streitereien in der Beziehung eskalierten?

### **Während des TA**

Wenn Sie an den Tatausgleich zurückdenken – woran können Sie sich am besten erinnern?

Woran erinnern Sie sich (Einzelgespräch, Ausgleichsgespräch, Ablauf, Zahlung, Erledigung ohne Gericht) – (wenn Detail genannt – bitte ausführen!)

Wie gut sind Sie mit dem Betreuer/ der Betreuerin bei Neustart zurechtgekommen?

### **Zur Konferenz selbst**

Bitte den Ablauf schildern!

Wie waren die Vorbereitungen zum Ausgleichsgespräch? (wie oft, wie war das?)

Wieviele Mediatoren – welche Methode (siehe auch Akten) – wie wird das wahrgenommen?

Wie sehr konnten Sie sich selbst einbringen? Wer hat den Ablauf bestimmt? Hat man das Gefühl, man kann sich aktiv einbringen?

Verantwortungsübernahme?

Wer hat sonst noch teilgenommen?–

Wie war es für Sie, dem Opfer zu begegnen?

Bei häuslicher Gewalt: Hatten Sie das Gefühl, dass der Tatausgleich beim Opfer/ bei Ihrer Frau /Lebensgefährtin etwas veränderte?

Wie ist es, wenn Sie heute dem Opfer begegnen? (Wie wäre das ohne TA?)

Gab es bei der Konferenz etwas, das Sie mochten/ das gut funktioniert hat? (auch: nicht zu Gericht)

Gab es etwas, das Sie nicht mochten/ das nicht funktioniert hat?

### **Wiedergutmachung**

Haben Sie sich auf Schadenersatz geeinigt? Sonst irgendwelche Wiedergutmachung?  
Finden Sie, dass das fair war? Fühlten Sie sich genötigt, Wiedergutmachung zu leisten/  
Schmerzensgeld zu zahlen? Wollten Sie das wirklich selbst bzw. wie schwierig war es, die  
Wiedergutmachung zu leisten? Hat es sich danach gut angefühlt?

### **Sichtweisen auf RJ/ wiedergutmachende Konfliktregelung/TA**

Basierend auf Ihren bisherigen Erfahrungen

- Glauben Sie, dass es ein guter Weg des StAs war, mit ihrem Delikt umzugehen?
- Gab es irgendetwas, wovon Sie besonders profitierten?
- Wie schätzen Sie diese Form des Umgangs mit Straftaten überhaupt ein?

Glauben Sie, dass es eine gute Idee ist, dass Straftäter

- ihren Opfer gegenüber treten/ mit Opfern konfrontiert werden?
- Verantwortung übernehmen und sich entschuldigen
- Wiedergutmachung leisten?

Haben Sie beim Tatausgleich was gelernt/ hat er was in Gang gesetzt, das ihnen danach  
geholfen hat?

### **Nach dem Tatausgleich**

Hat sich seither etwas in Ihrem Leben verändert?

Wenn ja, was?

Gab es einen Wandel in Ihrem Leben? Warum haben Sie sich dazu entschlossen, Ihrem Leben  
zu verändern? Was war der Auslöser – für den Entschluss aber auch dafür, dass es Ihnen  
gelungen ist?

Hat der Tatausgleich da irgendeine Rolle gespielt? Oder andere Entwicklungen oder  
Interventionen? zB Männerberatung, Alkoholtherapie

War TA Auslöser oder Teil eines bereits begonnenen Prozesses?

Was war am schwierigsten zu verändern?

Was ist der beste Aspekt dieses neuen Lebens.? Was hilft ihnen straight zu bleiben?

Genauer: In den letzten 2 Jahren, hat sich da was verändert in

- ihrer Arbeitssituation
- Ausbildung /Schule
- Wohnsituation
- mit wem und wie Sie Ihre Tage verbringen?

In Bezug auf Ihre Familie bzw. Beziehung:

- hat sich das in den letzten 2 Jahren verändert (verbessert oder verschlechtert)?

Wie gehen Sie damit um, wenn die alten Probleme in der Partnerschaft auftauchen?

Gibt es etwas oder jemanden, der Sie in den vergangenen Jahren besonders inspiriert hat?

Waren bestimmte Personen, Gruppen, Organisationen (Familie, Kirche, Sportverein) hilfreich  
für Sie, nicht wieder straffällig zu werden?

Wie sehen Sie Ihre früheren Delikte heute? Welche Gedanken und Gefühle kommen hoch,  
wenn Sie an diese Zeit denken?



Wenn Sie von anderen hören, die solche Sachen machen wie Sie früher, wie sehen Sie das heute? Verursachen die Schaden? Was bräuchten die, um sich zu ändern?

Welche Rolle spiel(t)en bei Ihnen Alkohol oder Drogen, v.a in Zusammenhang mit den Straftaten? Haben Sie dagegen was unternommen?

Was motiviert Sie, weiter ein 'gutes Leben' zu führen? Was ist Ihnen heute wichtig (auch im Vergleich zu damals)?

Was sind Ihre Prioritäten für die Zukunft? Was hoffen Sie zu erreichen?

### **Self-Report**

- Gab es in den letzten Jahren ähnliche Situationen, wo Sie nur durch Glück einer Anzeige entgangen sind?
- Kamen Sie in den letzten Jahren in Versuchung, Straftaten zu begehen? Gab es Situationen, wo es schwierig war, sich nicht so wie früher zu verhalten, z.B. wenn Sie sich ärgern, bedroht fühlten?
- Wie sind Sie mit diesen Situationen umgegangen? Was haben Sie stattdessen gemacht? Hat RJ was dazu beigetragen, dass Sie jetzt anders damit umgehen können? In kritischen Situationen, was hilft Ihnen da: Ist es ein bewusstes Erinnern (an was? Welche Strategien?) oder spielen frühere Verhaltensweise keine Rolle mehr?
- Haben Sie irgendwelche Straftaten begangen in den letzten Jahren? (Kann auch Mikrofon abdrehen!)

**Soziodemographische Info** (bzw. aus den Akten): Schulbildung, berufliche Position, ausgeübte Tätigkeit, familiäre Situation (verheiratet, in Partnerschaft/ Kinder); [bei Jugendlichen: familiärer Hintergrund, auch Bildungsniveau der Eltern]

### *Appendix 3: Scheme of evaluation (Auswertungsschema)*

In a nutshell: Was ist das für ein Fall? What kind of case is this?

#### 1) Was ist passiert? Vorfall      What has happened? – offence/incident

- Vorfall/ Delikt/ Konflikttyp lt. Doku: offence/incident/ type of conflict acc. to the files
- Vorfall/ Delikt lt. Interview: offence/incident/ type of conflict as described in the interview
- Schilderung wie? How is it described?
- Diskrepanz zwischen Doku und Schilderung? Discrepancy between files and interview
- Relevanter Rahmen: relevant framework
- Verantwortungsübernahme? Taken over responsibility?
- Rechtfertigung justifications/ neutralisation?
- Von wem/was grenzt man sich ab? Claim to be distinct from...
- Rollenverteilung/ Mitschuld Geschädigter: Claim that the victim is (at least) partly responsible
- Bedeutung des Ereignisses (Lappalie, Einschneidend): relevance of the incidence (bagatelle or dramatic?)

#### 2) *Kontakt zur Polizei      Contact to the Police*

- Wie wurde Kontakt hergestellt? How was the contact established
- Aspekte des Kontaktes zur Polizei? Aspects of the contact with the police
- Effekt des Polizei-Kontaktes? Effects of the police-contact

#### 3) *Verlauf bis zum Tatausgleich? Before VOM*

- Relevante Entwicklungen: relevant developments until mediation
- Wissen über TA: knowledge of VOM in Austria
- Angst vor Gerichtsverfahren/Verurteilung: fear of criminal proceedings/ conviction
- Anbahnung TA /Initiative (Eigeninitiative/ überraschend): initiation (self/ surprised by offer)
- Reaktion auf TA-Angebot (erleichtert oder ärgerlich) reaction to the proposition
- Motivation zu TA: motivation to participate

#### 4) *Ablauf TA      Course of Events*

- Region/ Neustart Büro regional Neustart-office
- Ablauf (technisch, Methode, auch Kontaktzahl, Dauer): course of events (method, duration, number of contacts)
- Erinnerung: how good is the memory of the mediation? (recalls/ has forgotten a lot)
- Verantwortungsübernahme? Taken over responsibility?

- Was wird am ausführlichsten geschildert/hat meiste Bedeutung: What part of the mediation is described in most detail (one-to-one interview with mediator or meeting with victim?)
- Bewertung des eigenen TA und Kriterien der Bewertung: Evaluation of the TA (and criteria for evaluation)
- Atmosphäre: atmosphere
- Bewertung der Konfliktregler & der Gesprächsführung: Evaluation of the mediators and guidance through the process
- Bewertung Neustart (ev. vorher/nachher): Evaluation of Neustart
- Schmerzensgeld und Kosten - Bewertung: financial reparation, costs of the mediation
- Rechtsanwalt? Lawyer involved?
- Dolmetsch? Translator involved?
- Beobachtungszeitraum? Period of observation
- Bewertung TA allgemein general attitude towards TA/ RJ

#### 5) *Effekte Effects of VOM*

- Wozu war der TA gut? What was the benefit of the TA?
- Lerneffekte für ähnliche Situationen? Learning effect for similar situations
- Reparatur beschädigter Beziehungen? Reparation of broken relationships?
- Beziehung/ Begegnung heute relation to the victim today (what happens if you meet today)
- Versöhnung? Forgiveness & conciliation
- Entschuldigung (wie)? apology
- Wiedergutmachung? Making good/ reparation
- Vereinbarungen: agreements
- Guter Abschluss? Good termination
- Empowerment des Opfers? Empowerment of the victim
- Sonstige positive Effekte? Other positive effects
- Negative Effekte? Negative effects

#### 6) *(Neuerliche) Straftaten und Desistance (new) offences & desistance*

- Self-report bzw. Doku: Gab es früher Vorfälle? Prior history of offending
- Self report „Rückfall“/Wiederverurteilung? Recidivism, reconviction
- Desister im engen Sinn? desister in the narrower sense
- Wenn ja: Auslöser Desistance? If yes: Trigger for desistance process
- Wenn ja: was hat den desistance Prozess unterstützt? If yes: what has supported the desistance process
- Auslöser/ Unterstützer für Desistance bzw Legalbewährung
  - Spontanheilung / natural desistance spontaneous/ natural desistance

- Veränderte Umstände (z.B. Wegfall des Problems) change in the circumstances; problem no longer exists (e.g. kid grown up, no more fights, less pressure on relationship)
- Knifing Off: Wechsel von Freundschaften & Umfeld change of peer group, environment
- Maturation/ Reifungsprozesse Maturation
- Turning Points à la Sampson und Laub (Arbeit, Ehe), die unabhängig von gr innerer Transformation positiv wirken; Bindungen, Commitment (work, marriage) , desistance by default
- Hooks for Change à la Giordano et al. wie z.B. die Geburt eines Kindes (innere Einstellung für positive Wirkung zentral!) subjective meaning of events!
- Maruna:
  - o Making Good
  - o Skript der Erlösung/ alles, auch das Negative v. früher, macht Sinn redemption script. Everything makes sense now, even negative events or actions of the past
  - o (Wieder-)Entdecken des „wahren, guten Ichs“ – re-discovery of the real (good) me
  - o Betonen der eigenen guten Eigenschaften emphasize one's good character traits
  - o Neutralisierung früherer Kriminalität (zb man war schlecht beeinflusst, jung, dumm, Opfer) neutralisation techniques, apologies for past criminality
  - o Generativity – das Bedürfnis, der Gesellschaft und zukünftigen Generation etwas zurück zu geben.
  - o Narrativ voll (übertriebenem) Optimismus & Hoffnung exaggerated sense of optimism and hope
  - o Secondary desistance/ Veränderung der Persönlichkeit change of identity
- TA desistance fördernd: What was helpful in the desistance process?
  - o Behandlung durch/ Beziehung zu KR how the client was treated by the mediator/ relationship with mediator?
  - o Konfrontation mit dem Opfer meeting the victim
  - o Wiedergutmachung reparation
  - o Abschluss -> Zukunftsorientierung termination -> future-orientation
  - o Konkrete Tipps advice given by the mediator (such as: leave the house when you're getting angry...)
- Andere Therapien, z.B. Paartherapie, Männerberatung other therapies e.g. psychiatrist, anti-violence-scheme, partner therapy
- Zweite Chance nützen second chance
- Angst vor Vorstrafe fear of criminal conviction
- Schock über die Eskalation/ das eigene Verhalten being shocked by what had happened (own violence, escalation)
- Soziales Kapital, Beziehungen, jemand, der einem geholfen hat social capital

- Neue Routinehandlungen new routine activities
- Kein negatives Labeling lack of negative labeling
- Bewertung früherer Straftaten: evaluation of past criminality

7) *soziodemographische Daten Sociodemographic Data*

- Alter, Beruf, Geschlecht age, gender, profession/ education
- Soziale Rahmenbedingungen & Soziales Kapital (unterstützende Netzwerke) social sbackground

8) *Eindrücke, Anmerkungen, Reflexion Reflexions on the Interview*

- Mögliche Interviewer-Effekte: possible interviewer-effects
- Motivation d. Klienten, am Interview teilzunehmen (was ist die message, die sie rüberbringen wollen? Latent/manifest): motivation to participate in the study
- Eindrücke & Anmerkungen: Memos & supplementary notes
- An welche anderen Fälle erinnert dieser Fall? this case is similar to/is completely different from

## Chapter 5 – Belgium

Katrien Lauwaert

### 5.1. Restorative mediation in the French speaking part of Belgium

In Belgium, adult offenders, their victims and any other party with a direct interest involved in a criminal procedure (e.g. a partner or a family member) can ask for a victim-offender mediation. This is what we call ‘restorative mediation’. The mediation takes place parallel to the criminal procedure.

#### *History*

Restorative mediation started as a pilot project in one judicial district for cases of serious offences, i.e. for which the prosecutor had already decided to refer the case to trial. The project was then gradually expanded to all judicial districts of the country over a period of about 10 years. The bottom-up and gradual development of the practice resulted in a strong conceptual framework and thorough expertise in handling very different types of cases. This matured practice received a legal bases in the federal law of 22 June 2005 on victim-offender mediation. This law introduced provisions on restorative mediation in the Preliminary Title of the Code of Criminal Procedure and in the Code of Criminal Procedure itself.

#### *Field of application*

The law allows restorative mediation at every stage of the criminal justice process: at the police stage, at the level of the public prosecutor, after prosecution, and even during the execution of the sentence. Since 2011, slightly more than half of the cases in French speaking Belgium were mediated when in the post-sentence phase. In 2012 for example, 59% of the total number of cases were post-sentence, and 42% were mediations post-sentence with prison inmates.

Any party involved in a criminal procedure with a direct interest in the case can apply for restorative mediation. The parties do not depend from an offer by the judicial authorities. In practice, the majority of the requests come from the side of the offender. In 2012 for example, 67.8 % of the requests in French speaking Belgium came from the side of the offender . They contact the mediation service for example after having received information from a

professional such as the social service in the prison or the probation service, or because they heard about the mediation service Médiante from a fellow prisoner. 13% of the requests in that same year came from victims who contacted the mediation service spontaneously or after having received information from a professional such as victim support. 19.2% of the requests came after both victim and offender were informed by a magistrate about the possibility of mediation.

The law neither specifies nor excludes certain types of offences as suitable for mediation, nor does the law exclude recidivists. In French speaking Belgium, the most common offences mediated are (in decreasing order and for the period 2007-2012) assault and battery (1519 cases), violent robbery (1341), thefts (1339), sexual abuses (781) and murder (732). In addition, but to a lesser extent, mediation was done in case of traffic accidents (causing death or serious injury), stalking, domestic violence and neighborhood conflicts. Although the law allows restorative mediation for all types of crime, also petty offences, the historical roots of the project still influence the caseload today. Generally restorative mediation is dealing with (more) serious offences.

#### *Mediation organisation Médiante*

All requests for mediation in the French speaking part of Belgium are referred to Médiante. This is an independent, non-profit organisation subsidised by the Ministry of Justice in the past and since 2015 by the Walloon-Brussels Federation. Médiante has a central office in Namur and 14 local mediation services. It covers a territory of approximately 17.000 km<sup>2</sup> with around 4.000.000 inhabitants. The mediators are all paid professionals. On average there are about 17 mediators active. Every year a fulltime mediator treats about 75 cases. In the recent past about a thousand cases were referred to Médiante on average each year.

#### *The mediation process*

Once the mediation service receives a request, a mediator contacts each of the parties and starts separate talks with the victim and the offender. These preparatory meetings are of great importance in the mediation process. The mediator attempts to create an atmosphere of trust to promote the relationship between the two parties. Due to the seriousness of the offences Médiante is handling, this preparatory phase can take several months .

In principle the mediator meets victim and offender in person, except when he needs to communicate some minor details. Then a telephone contact can suffice. There is in general a

first contact to listen to the request and to verify whether the person is ready to listen to the other side's expectations. Thereafter there are more contacts to prepare the face-to-face meeting. These preparatory meetings last as long as the mediator, the offender and the victim do not find an agreement on the goals and the modalities of the meeting itself. There are no predefined goals for the mediation process. The mediation will be about what the parties want to bring to the table. The mediation is conceptualised as a forum for communication between victim and offender about what they deem useful and needed. In practice this can be quite diverse. Offenders take part for example to answer questions, to listen to the message the victim wants to convey about the impact the offence has had on their lives, to apologise, because they heard from fellow prisoners that this can positively influence an early release decision, to prepare the conditions for an early release in communication with the victim, to compensate in a concrete way the harm done, to manage feelings of remorse, to show that they are more than just an offender... Victims want for example to express their feelings, to receive an apology, to get answers they did not receive at the trial, to obtain financial compensation, to take part in the preparation of practical arrangements in view of the release from prison... In summary, the agenda of the mediation can be very narrow or very broad according to the wishes of the party. It is not the mediator who sets the agenda. (Buonatesta & Kellens, 2009)

During the whole process the main focus is on the communication between the parties. A key element in the dialogue is very often the discussion of 'what happened': facts and meanings are repeatedly discussed and redefined, as well as possible solutions.

The registered data show that about three quarters of the mediations (72% in 2012) are only indirect. The mediator acts then as a go-between and there is no face-to-face meeting.

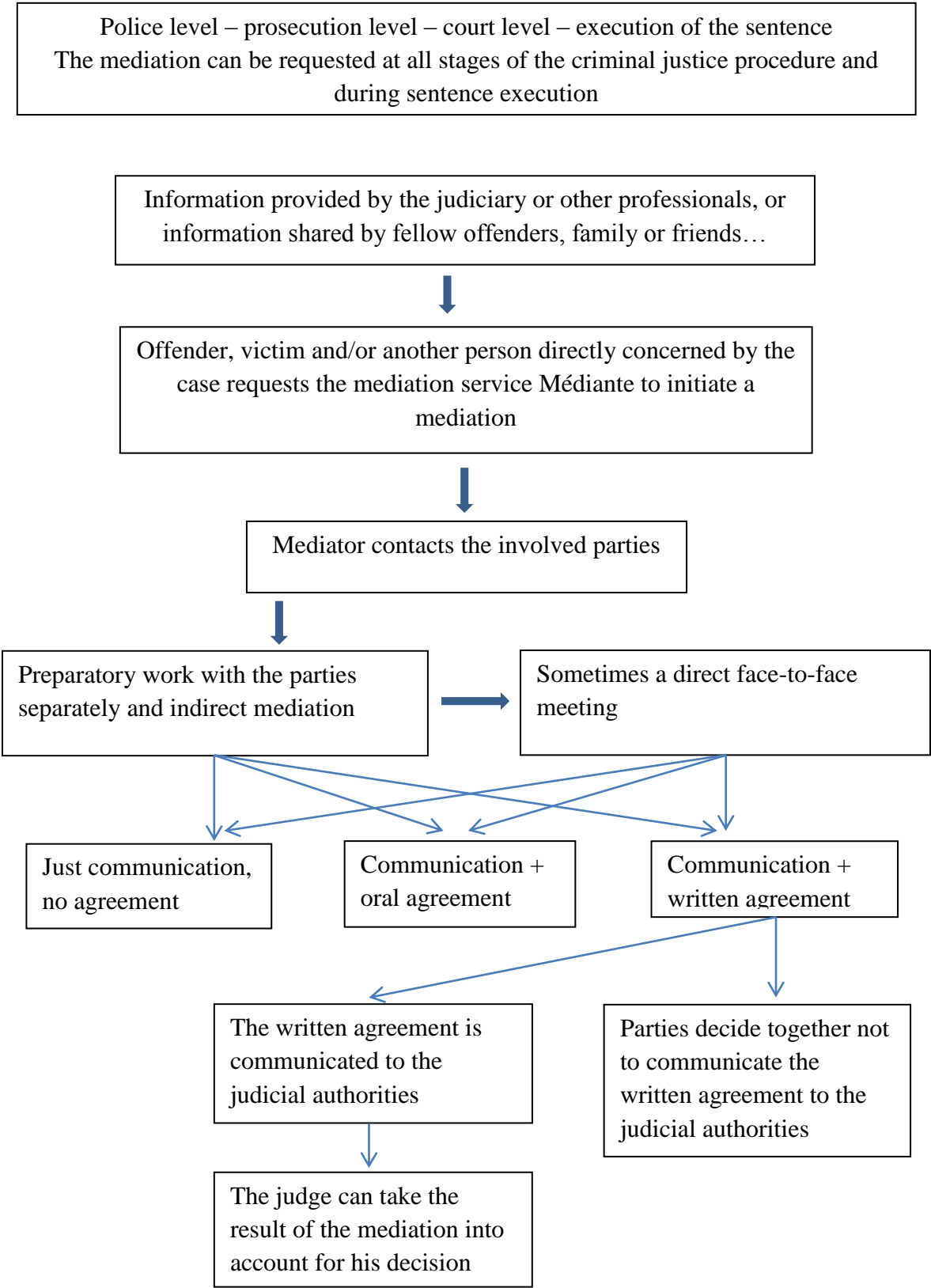
The mediations are not strictly limited to the victim and the offender. Other people can be involved in the process or present during the meeting, for example family members, offender or victim support, the lawyer or therapeutic assistance. The presence and participation of these supporting persons is however not a fixed or structural part of the mediation.

The mediation is not predominantly outcome driven. The process can stay limited to communication or can lead to an oral agreement which is not put down in writing. Sometimes the communication between the parties results in a written agreement (containing financial reparation or concrete commitments). Only with the explicit consent of both parties information on the mediation process and the outcome can be communicated to the judge.



There is no automatic link between the outcome of the mediation and a judicial decision. If there is some information brought to the judge, he must mention this in the judicial decision. But it is up to the judge himself to decide whether or not he takes this information into account. If the judge decides to take into account the outcome of the mediation, this should be stated in the judicial decision as well. The rules on the confidentiality of the mediation are very strict and the mediator cannot be summoned in court to testify. Underneath follows a flow chart of the restorative mediation procedure.

Referral and processing scheme



### *Restorative mediation versus penal mediation and mediation and conferencing for juveniles*

Restorative mediation needs to be distinguished from two other restorative practices organised in Belgium and which are – differently from restorative mediation - an integral part of the (criminal or juvenile) justice system. The initiative for the mediation is then not taken by the victim and/or the offender, it is in the hands of the judicial authorities. First, for juvenile offenders and their victims, mediation and family group conferencing can be proposed by the public prosecutor (mediation) and the judge (mediation or family group conferencing). The outcome of the mediation or conference is taken into account by the prosecutor or the judge in their final decision on the case. Second, for adult offenders and their victims ‘penal mediation’ can be proposed by the prosecutor as a diversionary measure. In case of a successful mediation, the case will be dropped. The current research project focuses only on restorative mediation.

### *Restorative mediation and the goal of desistance*

As can be seen from the description above, the main goal of restorative mediation is to offer a platform for communication between victims and offenders. The parties set the agenda. Reducing reoffending or influencing desistance is not on the list of direct objectives of the programme. Specific actions in that direction, like drawing up a reparation plan (aimed at repairing the victim and addressing underlying problems of the offender) are not an obligatory part of the mediation. Nor is it standard to involve other people besides the victim and the offender, who have the task to support the offender during and after the restorative justice process. Nevertheless the mediators report that they do notice that the mediation process can create dynamics which seem to influence the offender. Therefore, they felt motivated to take part in this research, in order to find out whether this impression is correct and to understand better how this ‘black box’ works. What exactly is it that makes the difference? There was however also some hesitation around the possible policy implications of the research. It was seen as a risk that the research and its outcomes would link the mediation practice too much with the traditional criminal justice goal of crime prevention and reduction of reoffending, and steer it away from the core restorative justice goals of communication and reparation. Moreover, it could possibly project unrealistic expectations on the mediation. Or even worse, it might inspire policymakers to evaluate mediation practice on the basis of its capacity to reduce reoffending, which would make the mediation practice vulnerable. The eagerness to

know prevailed over the considerations about the risks, and Médiante accepted the invitation to become a partner in the project.

## **5.2. Sampling and research procedure**

The goal of the sampling was to obtain the agreement to take part in an interview from 30 desisters who had taken part in a mediation process.

The ‘mediation process’ could be direct or indirect and could have taken place before or after sentencing, but it had to consist of at least a significant exchange of communication. A written mediation agreement at the end of the mediation process was not required for selection of the case.

We considered ‘desisters’ the persons who responded to the following criteria:

- They had at least one conviction before the conviction linked to the mediation;
- After the mediation, there were no convictions other than – in case of pre-trial mediation - the one related to the mediation.
- Additionally, at least one year had passed between the mediation and the selection, or, in case of imprisonment, the person had been released for at least one year before the selection for the interview.
- Finally, a self-report question was inserted in the interview to check with the participant that no reoffending had taken place in the recent past.

In order to select the persons responding to all these criteria, a quite complicated process had to be followed.

First, mediation cases were selected from the database kept by mediation service Médiante. Included were direct and indirect mediations, organised before or after sentence, where at least one year had passed between the mediation and the moment of selection.

Second, the offenders related to these cases were identified (as one offender can have a mediation with several victims in different mediation cases).

Third, the criminal record was checked and only those offenders with at least one conviction before the conviction linked to the mediation and no further convictions after the mediation were selected. In order to access the criminal records, an official permission was obtained from the Central Criminal Records Office (Centraal strafregister) and a declaration of confidentiality was signed by the research team (see appendix 1).

Fourth, for the offenders who went to prison, database SIDIS of the penitentiary administration was consulted to check whether the offender had been released for at least one year. An official permission to access SIDIS was obtained (see appendix 2).

At this moment in the selection process, the remaining persons had the right profile, but we still had to locate them and ask for their participation in the interview. In a first sweep during which 536 mediation files were selected from the database of mediation service Médiante, only 73 persons had the right profile. The scheme in appendix 3 shows the filtering process for this first sweep.

A fifth step was the hunt for correct addresses of stay and/or phone numbers. Different sources had to be consulted: the mediation files and database at Médiante, the regular electronic phonebook, SIDIS (for addresses provided by prisoners upon their release) and the national register of addresses. This last source provides the latest official address of everyone registered in the country, but it is not directly accessible for mediators or researchers. For difficult cases the mediators used their contacts with civil servants to obtain the most recent address.

Sixth, the potential participants were contacted by the mediators by phone if possible or by letter otherwise. An instruction was prepared for the mediators, so that all invited participants were treated in an equal way (see appendix 4). Invitations by phone were much more successful than invitations by letter.

Seventh, once a person agreed with the mediator to participate, this information was sent to the lead researcher, who then contacted the participant to set a date and time for the interview. Not all participants showed up, and so even in this last phase some potential participants were 'lost'.

The selection process operated as a huge filter. A first, large selection of 536 cases at the mediation service and additional efforts later resulted in the end in a total of 25 interviews.

The 25 interviews were conducted in French and face-to-face by the lead researcher between 20 March and 3 October 2014. Most interviews (21) took place in a local mediation service, as participants felt most comfortable being interviewed there, three at the participant's home and one in a public park. The average duration of the interviews was 47 minutes, but there was a big variation, going from 16 to 94 minutes.

The interviews were semi-structured. A topic list was used (see appendix 5) which was an adapted version of the English topic list developed in collaboration with the researchers from Austria and Northern Ireland (see appendix 6). All interviews started with an open question inviting the participants to tell about their past life, the experience of the mediation and how their life moved on since. If this did not come up spontaneously, the participants were asked about their past offenses, about drugs and alcohol use and details about their experience of the mediation process (initiation, preparation, the meetings, the outcomes and the aftermath). They were asked about their present life and offending - if any - and about what kept them on the right track when temptations to reoffend occur.

At the end of the interview, the participants were offered 20 euros to cover travel costs and as a gratification for their participation. If they accepted they signed a receipt (see appendix 7).

With the agreement of the interviewees all the interviews were audio-taped and transcribed.

Looking back we see a mixture of interviews in which participants recalled detailed information about the mediation and interviews in which the participant could describe only his general impressions of the mediation process without remembering much detail. That is not surprising given the fact that the time span between the mediation and the interview varied from 1 year and 3 months to 6 years, which is a consequence of the fact that we only selected people who were out of prison and crime free for at least one year before the interview. Some had clearly reflected on and talked about their life course before while that was a difficult exercise for others. Some were very open and talkative, other had a difficult time to formulate their thoughts and to speak about their lives.

Due care was given to the voluntariness of the participation and the confidentiality and anonymity of the data.

The voluntariness of the participation was first explained when the mediator contacted the potential participant by phone and/or letter, and then reiterated before the interview. An informed consent form was signed before the start of the interview and after the explanation of the content of the form which covered the set-up of the research, its goal, details about the interview, the audio-taping and transcription, the confidentiality, anonymity and voluntariness of the participation. It was explicitly stated that the participant could stop the interview at any moment and that he was free to skip questions which he did not feel comfortable with (see appendix 8).

To guarantee confidentiality and anonymity, all names were removed from the transcripts and from then on the participants were only identified by numbers. Only the lead and assistant researcher had access to the data, which were kept in a password protected computer.

The analysis of the data was done via coding with Nvivo using a coding tree and via grids. An initial coding round in Nvivo was carried out on the basis of the literature. The coding list was then expanded and refined following what came up from the interviews themselves. Finally grids were developed to obtain an overview per participant and per theme on

- the criminal career before the mediation, the self-report and the presence/absence of desistance;
- the characteristics of the mediation;
- the overall influence of the mediation on the desistance path (positive influence (trigger or support), no influence, negative influence);
- the presence or absence in each participant's desistance narrative of specific factors.

These factors were taken from the coding tree used in Nvivo.

The grids allowed to keep the overview of each participant's story.

### **5.3. Characteristics of the sample**

#### *Gender and age*

All the participants were adult men between 24 and 69 years old, with an average age of 39. The age categories 20 to 29 years and 30 to 39 years (each 8 participants) were most represented. In addition, there were three participants in each remaining age group (40-49; 50-59; 60-69).

#### *Profile*

As we wanted to select desisters the participants were checked to have at least one criminal conviction prior to the case that led to the mediation and no further criminal convictions afterwards. We allowed a few men to stay in the selection who had a traffic offence after the mediation given the difficulty to find the right profile and because the traffic offence seemed not related to the criminal lifestyle they had before. The self-report confirmed that all in the group had stopped offending. A few reported to occasionally smoke pot or drink alcohol and one cultivated some marijuana for personal use.

The past criminal lifestyle of the participants was diverse. Although it must be kept in mind that the information was gathered in just one interview and that we cannot be sure that the participants revealed ‘the full story’, we think that we can discern different profiles.

One group had a real career in crime. They started to commit offences as a youngster and continued a large part of their adult life. Some of this group committed different types of offences while others specialised in a specific type of offence, such as scams or robbery. Some of them developed a two track career, with a regular day job in combination with illegal activities. Only a minority of this group had problems with alcohol or drugs.

One man’s criminal history was exclusively linked to sexually deviant behaviour. Before going to prison he had been a successful manager in the restaurant business.

Another group was involved in offences committed under the influence of a peer group during adolescence and young adulthood. Alcohol and drug abuse was frequently part of their lifestyle and precarious social situations part of their background. They reported having been involved in vandalism, theft, different forms of violence such as fights when going out at night and clashes between gangs, causing accidents when driving under influence, and speeding. ‘Stupid mistakes’ as some framed it in the interview. For some the situation got out of control and the crimes escalated in more serious or organised ones: for example from small thefts to stealing and making over cars or motorcycles, or escalated drug abuse leading to a totally out of control situation involving theft and inappropriate sexual behaviour.

A last group consists of participants who indicated they never had any trouble with the criminal justice system before the mediation. Although they technically corresponded to the profile we were looking for, their previous convictions were related to for example problems with the technical control of their vehicle, the non-registration of the vehicle or the liability insurance. One was convicted for involuntary assault and battery. In their case we could not really speak of a previous criminal lifestyle.

Looking at where they were in the desistance process at the time of the interview, we can distinguish a few patterns, although it is not easy to fit all the participants in one or another category.

One group can be said to have adopted a pro-social lifestyle and a self-identity in which there was no more room for their previous criminal behaviour. Their priorities and mentality had changed. They wanted to live an honest life. In this group some had started a family or gave



now priority to their role as father and grandfather, some got schooling and a job. Moving away from their past criminal environment or staying away from peers they were involved with, were part of the strategies they used. Most of them referred to a period of introspection, and this regularly took place in prison. Almost every participant who was abusing drugs or alcohol stopped or had a minor use now. A few participants also wanted to use their experience to help others to make better choices. They talked to other inmates or to young people in their neighborhood. Within this group some participants emphasized a process of maturation. They 'grew up'. They found work, went out less than before, and realised that 'what they did was serious and that you did not have to be proud of that'. Although all this sounds great, the daily reality of many of these men was not that of an 'easy' life in the sense of a smooth family life supported by a stable employment and a good physical and mental health. Some had moved on further than others who just started to rebuild a different life, but we often heard in the interviews about ongoing struggles with (mental) health issues and precarious economic situations in which they depend on the financial and practical help of family members and social services. Obtaining and managing to keep an employment was a key issue.

For another smaller group it was not so clear whether they had really changed their mentality/self-identity or gotten the underlying problem sufficiently under control, even if they stopped committing offences. This was for example the case of an older men who had lived in the margins of society most of his adult life, had been using heroin for 15 years and was involved in offences including theft, stolen checks, scams, not paying child support and even murder. During the interview he repeatedly said he was under probation supervision and 'could not' reoffend or return to his old life. Another participant gave a very chaotic and 'disturbed' impression during the interview and as far as we could understand his story, the acts he was charged with seemed related to this condition, which at the time of the interview did not seem resolved. Another participant stated that he now 'refused to be in contact with anything illegal', but also indicated during the interview that he had problems with aggression, that he learned to stay more calm, but that when a person crosses the line, he still could become 'very angry'. Another participant who was involved in stealing and drug related offences, indicated he quit the stealing but is still around the same peer group and stays involved, although at a very moderate level, in drug use.

A last group consists of participants who met the formal desistance criteria of the research, but they do not consider they had a previous criminal lifestyle. Although convicted once or a

few times before, they had a quite 'normal' life. For them, it is in fact more adequate to speak of learning effects instead of desistance, as they did not have a 'criminal identity' in the first place. They learned for example to remain calm or to walk away from occasional situations that could lead to a fight.

### *The mediation*

In the majority of the cases (17) it was the participant himself who contacted the mediation service.

Several kinds of motivations to participate in mediation can be distinguished and two of them were cited most. First of all different participants saw the mediation as a plus in view of upcoming judicial decisions. They started or accepted the mediation to avoid court or, in case of imprisonment, hoping that it would positively influence decision making concerning a leave or a conditional release. Another important reason was that the mediation gave participants the possibility to express regrets and to restore the damage they had caused. For other participants it seemed important to find a manner to clarify their own role in what happened and to explain this to their victims. Others were motivated to provide to their victims an explanation for what happened. The mediation was then seen as an opportunity to answer the questions the victims may have had. A further reason to start the mediation was again more self-centered: to feel better, to forget the bad experiences with the criminal justice system and to be able to move forward. Finally, one participant only wanted to have some news from his victims.

A variety of offences led to the mediation. Robbery and voluntary assault and battery (six participants each) were most common. The other mediations concerned reciprocal assault and battery, participation in a murder, sexual offences (including incest, attempted rape and rape), theft, burglary, extortion, fraud and receiving stolen goods.

From all the mediations, 11 were started pre-trial and 14 post-trial. Just less than half of the participants were condemned and imprisoned when the procedure had started. Four met face-to-face with their victim while still in prison. Other participants did the preparation in prison, but met the victim outside at the local mediation service. Two participants were under probation and one under conditional release.

A majority of the mediations were indirect (16), mostly because the victim refused a face-to-face meeting.

In most of the mediations only the victim, the offender and the mediator were involved (17). In none of the cases, supporters were present on the side of the offender. Family members of the victim were involved in only three mediations.

Most of the participants (18) had several contacts with the mediator. Contacts were face-to-face, by phone or through letters.

Looking at outcomes of the mediation, almost half of the mediations led to a combination of significant communication between the parties combined with an agreement in the end about finances or future conduct. Some participants stated a kind of bond was created with the other party. Frequently the parties talked about what happened, but also about their lives now and about the future. In some mediations the dialogue was most important and they did not make a (financial) agreement at the end. A minority of the mediations stayed limited to working towards a financial agreement. In some cases there was no clear outcome, because the exchange between victim and offender was very limited, or got stuck.

## **5.4. Findings**

### *5.4.1. Influence of the mediation on the desistance process?*

For a clear majority of the interviewees who went through a desistance process and participated in a direct or indirect mediation, the mediation had some kind of influence on their desistance process.

A trigger for desistance

For only a few participants the mediation can be described as a **trigger** for change. This triggering effect shows in different degrees of intensity.

One participant had been a drug- and alcohol addict for 10 years and the offences committed were linked to this lifestyle. He also described himself as very aggressive when he was under influence. The mediation operated for him like a ‘declic’. It did not stop him from taking drugs at first, but the work with the mediator made him think about his lifestyle and about what had happened. This was the start of a process leading to a decision to change. The actual process of change happened when he met his girlfriend who supported him to stop using drugs and to change of environment. (participant 1)

For another participant the mediation acted as a strong trigger for desistance. He describes the mediation as an electroshock. (participant 7)

*'Je vous dis du côté de la médiation, le plus important c'est que ils m'ont aidé de prendre contact avec ces gens-là, rien que d'entendre déjà ce qu'ils avaient vécu, ben cela a fait un petit électrochoc pour moi . (...) 'Une sorte d'électrochoc (...). Déjà, moi j'étais gêné, mais quand elle (the mediator) est venue me rapporter ce que les gens ils avaient vécu et tout.' (...) 'Elle m'a expliqué ce que les gens pensaient, comment ils avaient vécu les choses, comment ils vivaient encore les choses à l'heure actuelle et voilà quoi ça, ça permet aussi de faire le point sur soi-même. Ces gens vivaient dans la peur et tout, tu vois, c'est pas bien.' 'Je me suis dit, ça plus jamais. Mais bon, c'était que des paroles et ben maintenant, petit à petit, ben, c'est un peu plus que des paroles... encore attendre un peu mais je pense que c'est sur la bonne voie.'* (participant 7)

Participant 5 described how the financial reparation agreed at the end of the mediation, and especially the monthly payment to the victim triggered a thinking process. Interestingly, not so much the impact of his deeds, but the heavy financial burden his behaviour had brought on him did influence his attitude. That was a main reason for change.

#### A support for desistance

More often the mediation acted as a support for a process of change which had already started. For certain participants the mediation had been an important and/or necessary step in the desistance process. Participant 3 had already undertaken important steps towards desistance while in prison, where he had time to reflect on his life. It is there that he re-discovered his religion which became an important guidance in his life. He stopped smoking drugs and tried to help other inmates. He also followed different trainings in prison to develop himself. Although well on his way in preparing a different life outside, it was very important for him to be able to express his regrets to the victim, and to be forgiven, and the mediation gave him the opportunity to do this. Participant 22 stated that the mediation, on the longer term, has meant a lot and that it helped him to turn the page. As he said: 'Mediation can change lives'.

*'C'est pas facile hein. Un enfant quand il a fait une bêtise, il a beaucoup de mal à demander pardon. Mais quand on le fait ça... et c'était tout ça quoi (...)*

*Sur le plus long terme, ça apporte énormément. Moi ça m'a beaucoup apporté. Ça m'a permis aussi de tourner une page. Une petite page. De tourner une petite page et de ... j'avais aussi un sentiment de satisfaction. J'étais content et fière aussi de l'avoir fait. Vraiment j'étais content et fière parce que je me suis senti courageux, responsable et euh j'étais content de l'avoir fait. Mais ça on peut pas toujours... j'avais l'impression que j'avais fait tout ce que je pouvais faire et même plus. Parce que j'aurais pu juste sortir de prison et oublier. Parce que personne nous y oblige à faire ça. Il y a personne qui nous y oblige (...)*

*Ça peut changer des vies. Ça peut changer des vies parce que quelqu'un qui a commis un fait et qui peut se faire pardonner par la victime ou quelque chose ça peut changer une vie quoi.'*  
(participant 22)

For others, mediation was one (small) element in a chain of events (participant 8, 17, 18, 20). The data show that this is particularly the case for people heavily involved in crime over a longer period in their life.

No influence on desistance

For a few participants the mediation was without significance for their desistance journey (participants 2, 4, 6, 23). This does not imply that these were 'poor mediations'. They still could be helpful to the victim who received answers. The mediation can even have been significant to the offender, as with participant 2 who considered that even if the mediation had not helped him to get an early release, he did it for the victim and he continued to pay the compensation agreed in order to 'pay back' to the victim and to society. Only, there was no benefit for the desistance journey in his case, so he considered.

The way in which the mediation influences people's desistance journey is unpredictable. Sometimes they hope it will be a support in their journey and that is how it works out: they receive respect from the victim, have the opportunity to answer questions or are able to financially compensate. And these actions help to turn the page and build something new. Motivation and outcome more or less overlap.

Other cases show how fragile the mediation is as an instrument for desistance, in the sense that there is no guarantee concerning the effect on desistance, because much depends on the concrete context of each case, and sometimes the victim is not interested. Some participants

explicitly expressed that they hoped to communicate with the victim because they thought it would help them. But the victim refused to meet or only wanted to make a financial agreement through indirect mediation and these participants were strongly disappointed about this missed opportunity. (participants 17 and 19)

In still other cases there is no expectation of an impact on the process of change, but unexpectedly that is exactly what happens. Participant 9's mediation story starts when he wants to make clear to the victim how little he was involved in the robbery and ends in awareness of his responsibility. In this case, this unexpected impact did happen with a man who had a long criminal career during which he never really worried about the impact of his behaviour on victims.

#### *5.4.2. Factors supporting desistance*

##### *5.4.2.1. Factors linked to the mediation experience*

When people explained why the mediation was helpful for them, different aspects came to the fore: the attitude of the mediator, the open communication, the dialogue with the victim, the work done on 'emotions', the reparation agreed and implemented, the narrative around their identity during the mediation process and the mediation as a (potentially) positive influence on upcoming judicial decisions.

##### *The attitude of the mediator*

Off the record, before or after the actual interview, the interviewer thanked the participants for their presence and contribution to the research. It was striking how often the participants' reaction was that this was the least they could do in return for what the mediator had done for them. This was peculiar, as many of them were involved in the mediation several years before the interview. Also during the interviews, on the record, participants referred to how they had experienced the mediator's attitude and how this had been meaningful and supportive to them. Participants said they felt supported during the preparation of the actual mediation, during the meeting with the victim and after the mediation.

*'Donc moi je suis arrivé en premier avec madame X qui m'a beaucoup aidé ce jour-là. Elle avait vraiment un rôle, bon son rôle c'est d'être neutre, ça d'office. C'était vraiment la seule personne que je connaissais, que je voyais depuis longtemps. J'avais vraiment toute ma*

*confiance en elle et euh c'était ... c'était, sa présence m'a rassuré beaucoup. C'est comme si j'avais quelqu'un de ma famille à côté de moi. C'est vraiment ça. Parce qu'on se sent seul.'* (participant 22 speaking about the day of the direct meeting with the victim)

*Monsieur X (the mediator), il était beaucoup disponible. Je veux dire quand on téléphone il répondait direct. Moi par exemple si il répond pas, parce que je lui posais beaucoup de questions, et si il répond pas, que je dois sonner trois/quatre fois, ou deux/quatre jours qu'il répond pas, j'aurais abandonné. Donc, le fait qu'il soit disponible pour les gens qui sont enfermés, ça fait beaucoup. Rien que le fait que 'allo', c'est déjà un point gagné. Que ce soit une mauvaise ou une bonne réponse, c'était déjà un point gagné, parce qu'il a répondu directement. Il n'a pas attendu qu'on lui sonne pendant une semaine. Donc ça j'étais très content par rapport à ça aussi. Que ça soit moi ou ma femme. Parce que des fois elle venait à la visite et je lui demandais de sonner au service médiateur à monsieur X (the mediator) pour voir ce que ça dit pour le moment. Elle sonnait, il répondait et elle me disait voilà. Et alors pendant la visite elle me disait le résumé.*

*'Il (the mediator) explique bien, il vous met à l'aise.(...) Tout le monde a été convenable. Parce que (the mediator) a été impeccable, l'autre monsieur aussi et ça s'est bien passé quoi. Ça s'est passé super. Je devrais le refaire, je le referais.'* (participant 24)

A recurring remark concerned the openness of the mediator, referring to his/her lack of judgment of the person, the respect of the mediator towards the offender as a person, or as someone called it, his/her humanising attitude and his/her willingness to listen.

*'(...) elle était pas agent de police ou quoi que ce soit, elle était pas là pour juger. Elle voulait juste savoir et je veux dire, aider un peu à remettre sur le droit chemin. Un peu, c'est comme ça que je l'ai ressenti moi hein.'* (participant 1)

*'Vu en arrière ben je crois que je resterai quand même le même personnage, qui est dégoûté de la justice belge, (...) Maintenant vis-à-vis de la médiation c'est différent. (...). C'est une personne, une dame qui m'écoute, qui essaie de trouver des solutions à mes problèmes. C'est pas une psychologue qui essaie de me faire la morale ou quoi, c'est on va dire des arrangements, peut-être des idées qu'elle pourrait m'apporter.'* (participant 1)

*'Le contact avec les médiatrices, il y avait vraiment rien à dire. Même quand vous avez un souci ou quoi ce sont les premières à venir vous voir, (...) Parce que elles s'occupent de plusieurs personnes, mais chaque fois... vous ne restez pas anonyme quoi.. vous voyez ce que*

*je veux dire?. On a l'impression de retrouver un peu, on nous ré-humanise quelque part, parce que dans le système on ne reste que des numéros.'* (participant 2)

*'Très gentil dame, elle est très, pas de préjugés. Elle n'a pas dans les yeux le regard ' qu'est-ce qu'il a fait celui-là et tout.'* (participant 4)

*'Elle (the mediator) apporte euh tout ce qui manque pendant un procès, ça veut dire le côté humain.'* (participant 22)

One participant described the mediation service as a system that continued to stand with him, even after having left the prison and while paying small sums every month to the victim.

*'Je suis tout à fait satisfait d'eux et quelque part ça m'a tranquilisé par ce que dès que vous sortez, là c'est tout qui arrive hein, la justice qui revient avec les procès, vous devez tant , les amendes, les si, les la (...) et des fois c'est waw. Alors, quand il y a comme une institution, un système comme Médiante qui reste toujours à côté de vous, oui, cela aide un peu à vous tranquiliser. Parce que moi dès que j'ai trop de papiers qui arrivaient ou quoi, je téléphone (...).'* (participant 2)

Reference is made the quality of the service: often it is mentioned that the mediator was pleasant to work with, easy to reach, could be trusted and acted impartially.

*' (...) la première chose qui m'a marqué c'est la rapidité de la prise de contact, et le résultat. Ça m'a parce que je dis, ça va encore duré, non ça a été relativement vite et alors le médiateur m'a bien expliqué (...) je dirais la qualité de service, moi je trouvais ça très très bien.'* (participant 8)

*'Elle (the mediator) est précise dans ses explications qui se sont révélées exact quoi. Elle a pas euh... elle était vraiment entre les deux. Elle était pas plus pour la personne, pour la partie civile qui est venu me voir. Elle était neutre, c'est le sentiment que j'ai eu hé.'* (participant 4)

Moreover one participant explicitly emphasized that the mediator was there for him, not because they 'had' to talk to him as part of their professional mission. The '**mandate**' seems to matter. The mediator is there because the victim and/or the offender requested his/her support.

*' (...) c'est le jour et la nuit (...).'*



*'Et vous pouvez essayer d'expliquer un peu la différence ?'*

*'Disons qu'on vous écoute parce qu' au service, les psychologues dans les prisons, ils vous écoutent pour dire qu'ils vous écoutent quoi, sans plus. On va dire ils sont payés pour vous écouter, enfin... tandis que la médiation, elle va un peu plus loin, c'est plus ouvert, elle est plus chaleureuse, elle vous pose les bonnes questions, (...)' (participant 20)*

One participant stressed the importance of the mediator as the only person from outside the prison who was there for him. This is a feeling different participants have voiced.

*'C'est une chance pour un détenu d'avoir une organisation comme Médiate. Quand on est en prison on est abandonné de tout le monde. Tout le monde, même sa propre famille. Tout le monde, tout le monde, tout le monde. (...) T'es tout seul dans ta merde et tu dois assumer quoi.' (participant 18)*

*'(...) qu'il y avait encore des gens qui étaient à l'écoute après, parce qu'on se sent abandonné quoi...' (participant 1)*

An open space for communication

Linked to the attitude of the mediator is the more general setting of the mediation. Participants mentioned that it was good they could speak freely with the mediator (participant 1) and felt safe to explain their whole story to the mediator (participant 7). Another participant found it very sensitive that at a certain point the mediator left the room during the direct meeting with the victim, so that victim and offender could talk alone, and had an opportunity for a 'real exchange' (participant 3).

Speaking about the kind of communication which took place during the mediation, participant 22 made a comparison with his experience of the criminal trial. He characterised the mediation as a place where you 'have the right to speak' and where you can 'play cards on the table', 'bring up your own truth, the one only you and no one else knows' and which is different from the judicial truth.

*'Et (the mediation) c'est une sorte de deuxième procès un peu. Sauf que là on peut parler, on a le droit de parler, on a le droit d'expliquer. Et moi c'est ce qui était intéressant pour moi aussi.'*

*'Et vous avez eu le sentiment que ça n'avait pas été vraiment possible au procès judiciaire ?'*

*'Ah non. Jamais. C'est deux mondes différents. C'est deux mondes différents. Parce que déjà, on dit toujours en prison même les services psycho-sociaux le savent qu'il y a la vérité judiciaire et notre propre vérité. Celle qu'on connaît et que personne ne peut savoir. C'est pas pareil du tout. Et euh quand on est en prison, quand on est devant un juge et tout ça, ce sont des stratégies d'avocats, (...) le côté humain est effacé. (...) Mais c'est vrai que la médiation apporte ce truc là en plus. Le fait qu'on puisse parler. Parler sans intermédiaire, entre quatre yeux, cartes sur table... si on a fait quelque chose pouvoir demander pardon. Même si c'est rare qu'on puisse pardonner, fin ça dépend quoi...' (participant 22)*

One could argue that the aspect of the attitude of the mediator and the open communication illustrated here cannot be directly linked to desistance. It is not because the mediator shows respect that a prisoner decides to change his behaviour. When one reads through the full interviews though, one can see that this context creates the trust which is needed to let other things happen, which will be explained in the following sections. The respect, the openness, the lack of judgment, the support given, the bond created and the open communication make it possible for the mediation and the mediator to be a hook for change.

The communication with the victim

The direct meeting with the victim was a stressful event. One participant explained he was nervous because he did not know what to expect (participant 18); another one did not sleep the night before the meeting (participant 12). One man stated it was really difficult to meet with his victim because it was like facing himself and facing what he had done. He found that was psychologically difficult. (participant 22)

*'(J'étais) nerveux (...) C'est normal hein tu sais pas à quoi t'attendre, tu sais pas ce qu'elles vont penser. Tu es un toxicomane, elles vont te prendre pour un menteur.'* (participant 18)

*'C'était vraiment dur quoi. Il faut beaucoup de courage.'* *'C'est vraiment difficile parce que bon c'est un peu comme affronter son reflet. C'est un peu comme se regarder dans une glace. Et de voir la victime en face et d'être confronté et parfois ça peut être pour un fait qui date de plusieurs années, ressortir tout ça.'* (participant 22)

One of the narratives of a participant who had been imprisoned for extortion show how intense the whole process was.

*'La victime elle est venu au tribunal, elle était contre nous, elle a fait tout pour qu'on soit, je vais dire euh, condamné.*

*(The mediation) c'était le seul moyen de contact avec la victime (...) Moi, j'avais des regrets, donc je voulais m'excuser devant quelqu'un. Pas un mur tous les soirs, je veux dire, (...)*

*Il (the mediator) est venu une fois, il m'a un peu expliqué... au départ on y croit pas de trop.*

*Il (the victim) a voulu nous rencontrer. Ben moi, ce jour-là j'ai pas dormi, parce que j'étais content.*

*Ce soir-là (the evening before the encounter) j'ai pas dormi du tout. Le lendemain je me suis réveillé, j'attendais avec impatience.*

*Il est venu, on a discuté. Il a eu une réponse à toutes ses questions. Et moi je lui ai dit, tout ce que j'ai écrit pendant un an (...). Parce que moi j'avais écrit une lettre, pour lui envoyer. Si ça marchait pas, j'allais lui envoyer la lettre. Là je lui ai lu à vive voix, lui aussi il était content.*

*Moi je me suis excusé, je suis venu avec des photos de ma famille : voilà maintenant j'ai une famille, j'arrête tout ceci, pour moi c'est fini. Voilà j'arrête... donc la victime elle disait ok, moi j'ai rien contre vous...je vous pardonne.*

*On a parlé pendant deux, trois heures. (...) Puis quand il est parti, il m'a tapé dans le dos. Parce que c'est un monsieur de 50 ans on va dire. Il m'a dit, c'est rien, c'est pas grave ; il m'a dit ça arrive, mais il ne faut plus.*

*De temps en temps on se croise, on se dit bonjour. Pour vous dire. Et encore chaque fois que je le vois, je dis que je regrette tout ça donc. Maintenant on en parle plus. (...)*

*(And then, to the interviewer):Je voulais vraiment venir vous expliquer mon expérience. Parce que moi ça m'a touché vraiment.' (participant 12)*

Although it was often difficult and stressful on beforehand, all participants in a direct mediation expressed it was a good experience. For some the impact was more important and they explained how specifically it had influenced them.

A few participants stated the meeting 'took away a weight' (participants 1 and 3). It was a psychological help, a real relief. Keeping his feelings for himself, would probably have made things worse, one participant stated.

*'Mais voilà c'est, moi personnellement c'était très très important dans ma vie de le rencontrer. (...) Ca enlève un poids en moi en fait.'* *'Oui c'était important, très important pour moi. Ça s'appelle changement, oui le fait de dire les regrets, vraiment ... face à face et oui je vous pardonne etcetera, vraiment... voilà j'ai un soulagement par rapport à tout ça.'* *(...)* *'En fait, c'est comme si j'avais quelque chose en moi qu'il fallait détacher. C'était ça en fait, comme ça après j'étais libre de ce que je voulais dire, de ce que je voulais m'exprimer en fait. Après c'est comme si j'étais, comme si j'avais retiré un poids sur moi en fait.'* (participant 3)

Another participant explained that after the meeting with the victim he had felt courageous and proud, that it helped him to turn the page.

*'Sur le plus long terme, ça apporte énormément. Moi ça m'a beaucoup apporté. Ça m'a permis aussi de tourner une page. Une petite page. De tourner une petite page et de ... j'avais aussi un sentiment de satisfaction. J'étais content et fière aussi de l'avoir fait. Vraiment j'étais content et fière parce que je me suis senti courageux, responsable et euh j'étais content de l'avoir fait.'* (participant 22)

Another participant described the meeting with the victim as a wake-up call, a turning point. He got for the first time in trouble with youth justice at age 14 and was detained in different juvenile justice institutions. As an adult he had a dual career with a regular job during the day and a parallel criminal career. He finally ended up with a long sentence in prison for participating in the robbery of a money transport. Before the mediation he had not felt responsible for the consequences the victim suffered from the robbery as he had only been cutting a tree to keep up the police. When he talked about the mediation which took place several years before the interview he became emotional and said it was still on his mind today. During the mediation, for the first time, he said, he had realised what the impact of his deeds could be and had been on this victim. This had never been on his mind before. The victim had shown pictures of the history of his amputated leg and explained how his handicap made him dependant from others. The interviewee still keeps these pictures in a drawer today. Every time he opens the drawer, he thinks about the leg, the victim, the mediation. (participant 9)

What actually resulted in the impact of the meeting had to do with facing the situation of the victim (as described in the case above), but also with the attitude of the victim. One interviewee stated the victim was not there to judge him, the victim only wanted to know why he had committed the offence. He could explain how things had really happened, that he was in fact not a thief. (participant 1) Another interviewee was impressed by the fact that the victim (of inappropriate sexual behaviour) accepted the mediation and was open minded and really listened to him and was understanding. (participant 22) Participant 3, who had been extremely nervous at the start of the meeting, emphasized that the victim made him feel comfortable enough to speak and tell what was on his mind:

*'Avant ça je trouvais beaucoup de choses à dire, mais sur le moment même non avec le stress etcetera, je perdais un peu mes capacités. 'Et au début ça a été difficile pour parler etcetera, pour trouver les mots, dire ce que je voulais lui dire.' Mais au fur et à mesure, la victime m'a mis, bon ce qui est très rare, la victime m'a mis à l'aise en me disant, en me parlant etcetera. Vraiment c'était impressionnant.' 'Et là, à ce moment-là j'ai commencé à me lâcher, à me découvrir, à redire de ce que je ressentais.'* (participant 3)

Also the fact that the offender was able to explain things, that he could apologise and express his regrets or that he had the chance to show that he had changed since the offence, had been helpful. One of the interviewees took a family picture to the meeting to show the victim how he had changed (participant 12).

Although the interviews left the researcher with the impression that the impact of the communication with the victim was more intense when there was a face-to-face meeting, there were also cases in which the indirect communication with the victim produced similar effects. (participant 7 and 20)

*(The interviewer) 'Vous dites le monsieur (the victim) était compréhensif. Cela veut dire quoi exactement ?'*

*'Il comprenait l'erreur que j'ai faite et il comprenait les démarches que je faisais et que pour lui, il n'y avait aucun problème, je pouvais le rembourser tous les mois et il n'était pas rancunier si vous voulez par rapport à ce que j'avais fait.'*

*'Et par après, comment ça a marché ? (...)'*

*'Moi, je me suis senti plus léger, soulagé, et bien dans ma peau, c'est surtout ça.'* (participant 20)

#### Working with moral emotions

Moral emotions such as guilt, shame, embarrassment and regret were in some way present in a good number of narratives. Interviewees stated they felt bad, guilty, ashamed about what happened and that they hoped that the participation in the mediation would allow them to apologize, and to feel better and/or to be forgiven for what they did. (e.g. participants 3, 7, 12, 14, 15, 17, 20, 22) In all these cases the mediation started at the initiative of the interviewee. When this initiative led to direct or indirect communication with the victim about these emotions, this was described in various ways as (very) helpful (participants 3, 7, 20, 22).

*'Pff j'étais fort gêné aussi. Madame (the mediator) m'a remis fort à l'aise et tout mais cela me mettait mal à l'aise de reparler de tout cela et tout.'*

*'Oui, je vous dis, je n'ai rien caché, j'ai joué franc jeu avec elle, j'ai dit, cela me mettait mal à l'aise, et je vous dis, au début ben quand je la voyais j'étais vraiment gêné, gêné, gêné mais madame, elle a su me mettre vraiment bien, bien, bien à l'aise, c'est un bon service.'*

*'Mais elle n'était pas là pour me juger et tout, elle m'a dit 'écoutez monsieur ? vous n'êtes pas le seul dans le cas j'en ai déjà eu des autres, j'en aurai encore des autres. Moi je ne suis pas là pour vous juger vous, vous avez été condamné, vous payez votre faute et voilà quoi moi, je ne suis pas là pour juger.' 'Voilà petit à petit la discussion et tout, me mettre à l'aise et tout, après j'ai bien vu qu'il n'y avait pas de malaise vis-à-vis de ce que je lui racontais et tout mais au départ, ben je vous dis, c'est pas facile parce qu'arriver à expliquer vos histoires, vos histoires dans le passé, tu vois c'est pas toujours évident mais ça a été plus facile. J'ai dû me remettre un peu en question et tout, qu'est-ce qui avait fait que cela s'est passé comme cela, quoi faire pour pas que cela se représente et voilà, maintenant cela fait dix-huit mois que je suis rentré à la maison et j'y suis discrètement ...' (participant 7)*

In a few cases communication with the victim about these emotions was not possible, or stayed one way, either because contact with the victim was forbidden by the judge or because the victim did not reply to the letter of apology, and the exchange was limited to a financial arrangement. Participant 15, for example, had a proscription to meet or be in contact with the victim. He nevertheless wrote a letter and this helped him.

*'Personnellement, j'ai pas eu la chance d'avoir un contact avec les victimes parce que le juge n'a pas voulu. Donc, après ça, il y a eu une lettre. J'avais quand même écrit une lettre. (...) La médiation pour moi était assez bien pour dans la tête. (...) C'est réconfortant à l'intérieur de savoir que peut-être on peut toujours s'excuser quoi. Si le service (the mediation service) n'est pas là, on ne sait rien faire quoi (...) pour essayer de se faire pardonner puisque bon, on va avoir une sanction, on va être jugé, mais essayer d'avoir le pardon, c'est autre chose quoi (...)' (participant 15)*

In the case of participant 17 the victim had refused a direct meeting. This participant was disappointed that he could not meet the victim in person to explain and express his regrets.

### Reparation

The financial reparation the participants paid to their victim(s) came in a few narratives to the fore, but in quite different ways.

For participant 5 the financial reparation was a real burden and he did not want to be in such situation again in the future. The reparation acted as a motivation not to reproduce the same kind of behaviour. The fact that the beating he was involved in went to court and that it had long lasting financial effects on his life had impressed him and made him think for the future. In total he would pay a small monthly sum to the victim during more or less five years. Being without a job, he saw this as a heavy impact on his life for an act he had not perceived as very serious.

Participants 3, 16 and 20 saw the financial reparation as a means to make their feelings of guilt and regret visible. Participant 3 thought that compensating the victim was the only thing he could do to show his good intentions to the victim, by paying systematically, month after month. For participant 16 the compensation was a concrete translation of his recognition of culpability. Participant 20 wanted to pay back as he felt guilty to have stolen the car of a man who did not have a lot of resources himself.

Participant 3 started the mediation to make financial arrangements in order to obtain a conditional release. He insisted not being ashamed of his career as a robber of supermarkets 'without blood on his hands', and targeting 'institutions', not individuals. He accepted to pay his due, to do what needed to be done and once agreed he continued to pay even if in the end the mediation had not helped him to obtain a conditional release. This was a very rational approach, of a man who wanted to take responsibility for the collateral damage of a career he

had chosen. Paying the victims brought him ‘peace of mind’ because he was ‘doing what he had to do’. Is there a clear link with desistance in this last case? The participant, who had in the meantime stopped his criminal career, insisted that he was ‘a man of his word’ ‘who does not cheat’ and ‘paid his dues’. I think this can be understood as an affirmation, through the reparation, of his conventional or law abiding identity.

#### Pro-social identity and self-perception

Several participants saw the mediation as an occasion, or a platform to ‘correct the image’ the victims(s) might have had about them. By telling the victims their story, and their view on what happened during, and sometimes before and after the offence, they wanted to confirm the pro-social side of their identity. In several narratives it looked as if the offender called in the victim’s help to undo the label the criminal justice system had stuck on them. Apparently it was important to them that the victim acknowledged that they were (also) something else than the criminal justice label.

For participant 1, for example, it was important to make clear to the victim that he was not a burglar, although that was the qualification of the offence. He forced a door when tracking someone who had stolen something from him and he clearly did not agree with the idea of him being a ‘real criminal’.

*‘Ça m’a soulagé sur le fait qu’on m’accusait de cambriolage et moi je lui ai donné la vérité. La vraie version je vais dire. Donc oui moi ça m’a soulagé, oui. Que d’être montré du doigt, parce que ça reste sur le casier quand tu as fait du cambriolage, et ça j’aime pas, je suis pas voleur quoi. Voilà.’ (participant 1)*

Participant 12 had been convicted for extortion. When he was in serious financial troubles, he had obliged a person whom he acquainted first, to provide money. He wanted to explain in the mediation in which situation he had been at the time of the offence and how he had changed since. He wanted the victim to know that he had stopped offending and he brought pictures of his family to show his new life. Also during the interview he insisted on the pro-social aspects of his life: the normal school career, the fact that he had worked most of the time and the family life he built. That is what he wanted to be seen.



The mediation as an attempt to positively influence an upcoming judicial decision

When asked if and how the mediation had been helpful for them, several participants cited the fact that it had contributed to prevent the case to go to trial or that it helped to support a positive decision for a leave or an early release from prison (e.g. participants 7, 12, 18, 23).

One young man explained how important it was that the pre-trial mediation prevented the case to go to court. In order to compensate for the wood he stole to heat his house, he worked for the victim who owned the forest he stole from. Through this effort he had regained the respect of the neighbours who greeted him again. This was a depressed young man, whose partner had committed suicide and who tried his best to look after his daughter. After an adolescence involving drugs and trouble with the police related to ‘fast cars’, he seemed anxious to prevent his fragile situation going out of balance again. A new case in court would have been destructive. Probably we could say that mediation helped the young man from entering a downward spiral again.

Some had heard from other inmates or from prison staff that taking part in a mediation could influence positively the decision process for early release and this had been (one of) the motivation(s) to take part in the mediation. They saw the mediation as a practical way to work towards an early release which allowed them to execute a plan for reintegration which they had elaborated while in prison (participant 22, 18). They started the mediation strategically.

*‘Et ça justement c’est venu, c’est tombé du ciel. Je veux dire, j’ai vu une affiche sur le mur, j’ai pris le numéro, j’ai téléphoné.’(participant 12)*

#### 5.4.2.2. Other factors supporting desistance

In the section above we selected the factors linked to the mediation which helped people on their path towards desistance. However, in people’s narratives, we can confidently say, that always other factors, not linked to the mediation, were also in play and those were generally (much) more dominant. We mention the most important ones underneath.

For some of the participants who committed offences under the influence of alcohol or drugs, getting the alcohol or drug use under control was part of their path towards desistance. According to participant 1 the combined life of taking drugs during night life and working during the day became impossible, his body wore out. When he tried to stop taking drugs he

got severely depressed and at a certain point he felt he either had to kill himself or he had to change his life completely. This was for him a turning point.

Maturation was mentioned: growing up and understanding that what you did was actually serious; understanding the damage it can cause, and that you don't have to be proud of that; calming down and becoming less impulsive. (participants 3, 5, 16, 19, 23)

The reasons probably most often mentioned for starting a desistance process or for continued efforts to walk the desistance path related to family and other intimate relations: becoming a husband and a father and wanting 'to be there' for the children; not wanting to be separated again by a prison sentence from children and partner, respect for the suffering of parents or a partner who waited for them 'outside' for years; the support of family and friends through prison visits on a regular basis and encountering a new partner who believed in them.

For a good number of the interviewees who had been detained, prison life had been a shock: the confrontation of being a lot alone with yourself, the unhealthy conditions in some prisons (two showers a week, rats, toilet buckets in the room), almost no contact with outside, no liberty inside, were explicitly mentioned in this context. Being in prison also triggered introspection. This was the case with newcomers who had been shocked to arrive there, but also with regulars who were sentenced for the first time to a long sentence: reflexion on how they had ended up there, and how to go about life from there. Missing the family, not seeing their children grow up, not being outside when a parent or partner becomes ill or dies and the fear to end up there again (for an even longer sentence), the realisation that the criminal lifestyle was not worth all this personal misery, functioned as triggers and stimuli to stay out of trouble.

'Work' or 'a job' were mentioned as a positive factor when one had it, as a serious obstacle when it was lacking, and as a goal to go for because it supports a better life. Work is what certain participants kept going in difficult moments, it allowed others to pay debts. Getting a job was said to help for obtaining an early release from prison, starting a job was also described as one of the goals for the future, because it helps to have a stable life so that you 'can start dreaming of a family'.

Two participants made account of their spiritual/religious journey while in prison and how this had reoriented their life.

A few participants described that they used their life experience to help others, for example by advising youngsters from their neighbourhood involved in crime and drugs. Two mentioned doing volunteer work, respectively for the red cross and in a second hand shop.

Finally, a few participants mentioned the support received from other professionals than the mediator: a psychologist inside or outside the prison, the prison chaplain, the teacher in prison, prison guards, the prison director and the justice assistant.

## **5.5. Conclusion**

In the empirical work carried out in the French speaking part of Belgium, we interviewed 25 male desisters between 24 and 69 years old who had participated in victim-offender mediation organised by mediation service Médiante. It was not easy to identify and locate people with the right profile and this may indicate that this profile is in fact not so common.

A majority of the participants had contacted themselves the mediation service. A variety of offences led to the mediation, but robbery and assault and battery prevailed. The mediation was pre- and post-trial (some victim-offender meetings took place in prison), direct and indirect, and no offender supporters were involved during the mediation meetings. Communication and dialogue were major outcomes as well as written agreements about financial reparation or future conduct.

For a clear majority of the interviewees the mediation had some kind of influence on their desistance process, mostly as a support for a process already started. Only in a few cases the mediation acted as a trigger for desistance. Some participants' stories indicated that the mediation was without significance for their desistance journey although some thought it was probably helpful for the victim. Whether or not and to what extent the mediation would be influential seemed not always predictable, as it depended on the dynamics between both parties. This observation helps to understand practitioners' sometimes sceptical attitude towards the idea of having desistance as an explicit goal of the mediation, as became clear during the workshop in which we presented the preliminary findings.

When asked what in the mediation process had been helpful for them (which factors or dynamics), different aspects came to the fore. The attitude of the mediator and the open space for communication were cited. These factors cannot be directly linked to desistance, but they

seem to have created the right context for other dynamics to happen. Appreciated aspects of the mediator's attitude were the support he/she provided, the openness, the lack of judgment, the respect shown towards the participant, the willingness to listen and the 'humanising' attitude. The open space for communication meant that people felt free to speak and safe to bring their whole story and to dialogue 'cards on the table'.

The communication with the victim was a dominant factor. Although qualified as a stressful and intense event, it was said to be a good experience with the following reported effects: it took away a psychological weight from the participant's shoulder, it made people proud and courageous, it helped to turn a page. Some described it as a wake-up call. Facing the situation of the victim as well as the attitude of the victim (open, listening, understanding) triggered these effects. Being able to explain things, to apologise and being able to show they had changed, also contributed.

When participants had struggled with moral emotions like guilt, shame, embarrassment and regret, and they could work on this with the mediator and/or communication about it with the victim, this was reported as (very) helpful.

The financial reparation agreed was for some a real burden and therefore an incentive for staying straight. For others it was a way to make their feelings of regret visible and that was emotionally helpful. Finally it also worked as a way to take responsibility which provided 'peace of mind'.

Several participants tried to correct the image created of them through the criminal justice system. They sought so to speak the victim's acknowledgement of pro-social aspects of their identity, as if the victim would help them to undo the (wrong) label the criminal justice system has stuck on them.

Influencing positively an upcoming judicial decision was an effect of the mediation which was helpful for a number of participants and it had also been their first motivation to participate: preventing a case to go to court or obtaining a decision for a leave or an early release from prison. This is a motivation which is controversial in practice, and it is sometimes qualified as non-authentic participation or instrumental use of the victim. In some of these cases it is clear, however, that a prison sentence or a longer stay in prison would have been straight out counterproductive for the journey towards desistance.

As described here, different factors and dynamics within the restorative process had helped the interviewees on the way to a crime-free life. In all the narratives other factors supporting desistance and not linked to the mediation, were also present. Generally they were (much) more dominant: getting alcohol and/or drug abuse under control, maturation, support of family and other intimate relations, the shock of the prison, the confrontation with oneself and the time for introspection while being detained, employment, going through a spiritual journey and support from professionals such as social workers, the prison chaplain, a teacher or the prison director.

From the Belgian data only it is difficult to generalise about the question for whom and under which conditions the factors and dynamics mentioned above are relevant. The number of people interviewed is too limited and they all took part in the same restorative justice model.

It is striking that we did not find any reference to reparation plans that could have supported the rehabilitative efforts of the offenders. Nor did we hear about involvement in the restorative process of offender support persons who could have played a role as resource person during and after the restorative justice process. This is probably related to the fact that the researched practice concerns victim-offender mediation and not conferencing.

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## 5.7. Appendices

### Appendix 1: Declaration of confidentiality concerning the use of the criminal record data

**KU LEUVEN**

FACULTEIT RECHTSGELEERDHEID  
AFDELING STRAFRECHT EN CRIMINOLOGIE  
LEUVENS INSTITUUT VOOR CRIMINOLOGIE (LINC)  
H. HOOVERPLEIN 10  
3000 LEUVEN, BELGIË



**De heer Vincent Cambier  
Directeur  
Centraal Strafrechtregister  
Waterloolaan 115  
1000 Brussel**

ONS KENMERK  
UW KENMERK  
LEUVEN

28 mei 2013

**Betreft: Vertrouwelijkheidsverklaring in het kader van het Belgische luik van een Europees onderzoek naar 'Desistance and Restorative Justice'**

Geachte heer Cambier,

In een mailbericht van de heer Mark Vits gedateerd 7 mei 2013 hebben wij kennis genomen van het gunstig advies dat het kabinet van mevrouw de minister van Justitie heeft verleend inzake de toegang tot de gegevens in het Centraal Strafrechtregister in het kader van het door ons gecoördineerde onderzoek naar 'Desistance and Restorative Justice'.

Wij wensen u uitdrukkelijk voor deze toestemming te bedanken. De verleende toegang is cruciaal voor het samenstellen van de onderzoekspopulatie.

In bijlage vindt u een vertrouwelijkheidsverklaring die op vraag van uw dienst werd opgesteld om de vertrouwelijke behandeling te bevestigen van de persoonsgegevens waarmee wij in contact zullen komen in het kader van het onderzoek.

Hoogachtend,

Prof. dr. Ivo Aertsen  
Directeur LINC  
Algemeen supervisor onderzoeksproject 'Desistance and Restorative Justice'

Dr. Katrien Lauwaert  
Onderzoeker-coördinator onderzoeksproject 'Desistance and Restorative Justice'

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**Linc**  
LEUVENS INSTITUUT



## Vertrouwelijkheidsverklaring

Deze vertrouwelijkheidsverklaring is opgesteld in het kader van het Europese onderzoeksproject 'Desistance and Restorative Justice: mechanisms for desisting from crime within restorative justice practices', gecoördineerd vanuit het European Forum for Restorative Justice en gefinancierd door de Europese Commissie (JUST/2011/JPEN/AG/2962).

Het Belgische luik van het onderzoek, waarop deze vertrouwelijkheidsverklaring betrekking heeft, wordt uitgevoerd door dr. Katrien Lauwaert onder supervisie van prof. dr. Ivo Aertsen, beiden lid van het Leuvens Instituut voor Criminologie (KULeuven).

Gedurende het onderzoeksproces zullen de onderzoeker en de supervisor in aanraking komen met vertrouwelijke informatie, met name de persoonsgegevens van de voor het onderzoek geselecteerde populatie en de uittreksels uit het strafregister van deze personen.

Onderzoeker en supervisor verklaren hierbij dat zij de persoonsgegevens mondeling noch schriftelijk zullen verstrekken aan derden en dat de uit het strafregister ontvangen informatie anoniem (gecodeerd) zal verwerkt worden in de rapportage van het onderzoek en in eventuele publicaties.

Indien tijdens het project een beroep zal gedaan worden op onderzoeksassistenten voor ondersteuning zal ook door hen een vertrouwelijkheidsverklaring worden ondertekend.

Leuven, 28 mei 2013

Prof. dr. Ivo Aertsen

Supervisor

Dr. Katrien Lauwaert

Onderzoeker

LinC





## Vertrouwelijkheidsverklaring

ONS KENMERK  
 UW KENMERK  
 LEUVEN

Deze vertrouwelijkheidsverklaring is opgesteld in het kader van het Europese onderzoeksproject 'Desistance and Restorative Justice: mechanisms for desisting from crime within restorative justice practices', gecoördineerd vanuit het European Forum for Restorative Justice en gefinancierd door de Europese Commissie (JUST/2011/JPEN/AG/2962).

Het Belgische luik van het onderzoek, waarop deze vertrouwelijkheidsverklaring betrekking heeft, wordt uitgevoerd door dr. Katrien Lauwaert onder supervisie van prof. dr. Ivo Aertsen, beiden lid van het Leuvens Instituut voor Criminologie (KULeuven). Ondergetekende, Ambre Deprez, voert werkzaamheden uit als onderzoeksassistente ter ondersteuning van de onderzoekster.

Gedurende het onderzoeksproces zal ook de onderzoeksassistente in aanraking komen met vertrouwelijke informatie, met name de persoonsgegevens van de voor het onderzoek geselecteerde populatie en de uittreksels uit het strafregister van deze personen.

De onderzoeksassistente verklaart hierbij dat zij de persoonsgegevens mondeling noch schriftelijk zal verstrekken aan derden en dat de uit het strafregister ontvangen informatie anoniem (gecodeerd) zal verwerkt worden in de rapportage van het onderzoek en in eventuele publicaties.

Leuven, 31 januari 2014

Ambre Deprez

Onderzoeksassistente

Appendix 2: Permission to consult penitentiary database SIDIS



Federale Overheidsdienst  
**Justitie**

Directoraat-generaal  
Penitentiaire Inrichtingen EPI  
Dienst Managementondersteuning

Dr. Katrien Lauwaert

CONTACT Marijke D'haeseleer, administratief assistent  
TEL 02 542 82 57  
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ADRES Willebroekkaai 33, 1000 Brussel  
DATUM 12 december 2013  
KOPIE aan de betrokken gevangenis  
  
BETREFT Onderzoek

Geachte,

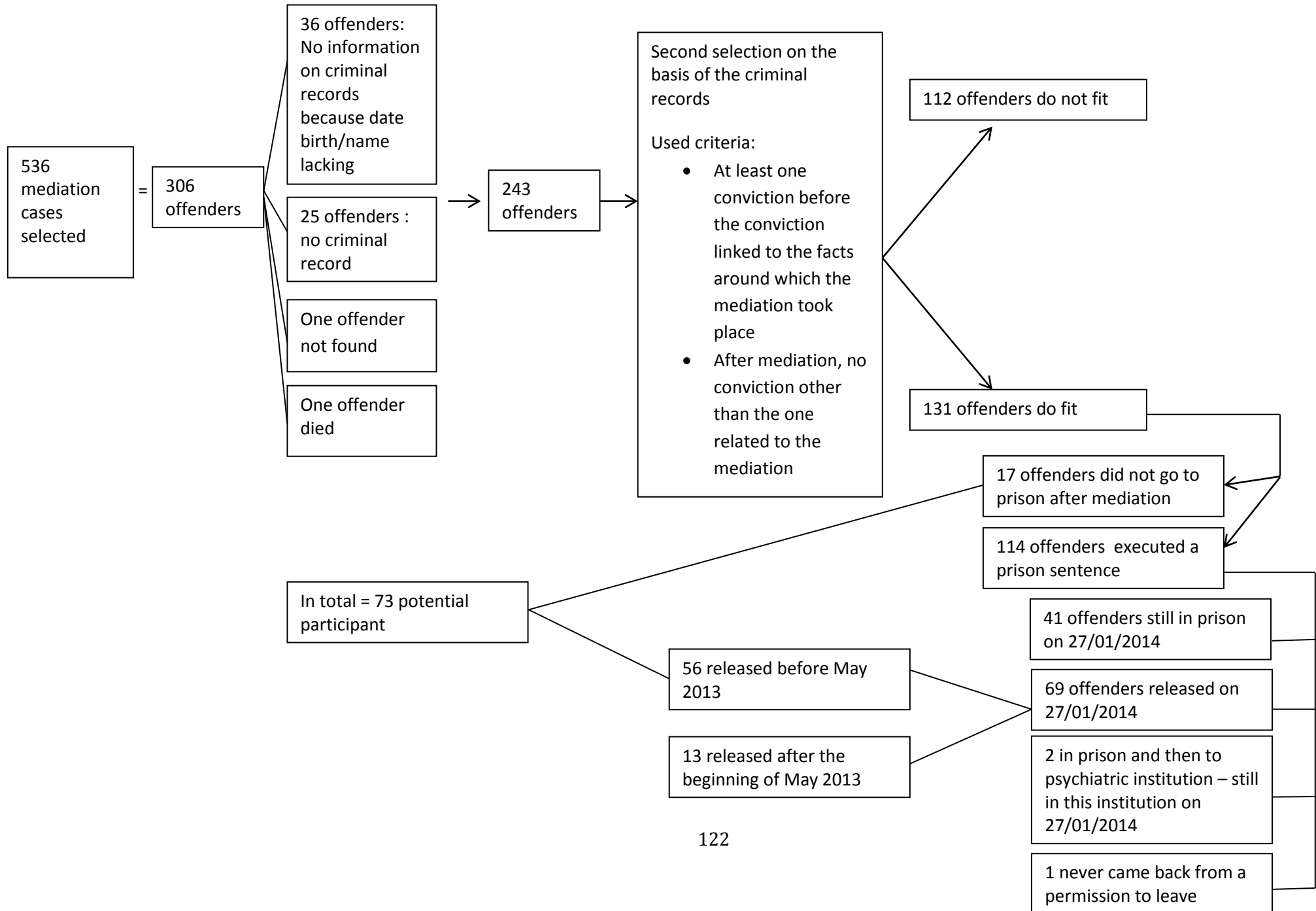
In antwoord op uw schrijven van 21 oktober 2013 kan ik u meedelen dat u als onderzoeker bij het 'European Forum for Restorative Justice en het Leuvens Instituut voor Criminologie, de toestemming krijgt om in het kader van een Europees onderzoeksproject getiteld 'Desistance and Restorative Justice : mechanisms for desisting from crime within restorative practises, via onze diensten na te gaan of en wanneer de geselecteerde personen die bemiddelden tijdens hun detentie vrijgelaten zijn en het huidig verblijfsadres van de betrokken personen na te gaan op voorwaarde dat de onderzoekers zelf het opsporingswerk verrichten.

Voor verdere praktische afspraken kan u contact opnemen met de heer Antoine Raucent, attaché bij de dienst Administratief Beheer op het nummer 02/542.81.13.

Met vriendelijke groet,

  
Els De Cat.

Appendix 3: Filtering process of the first sweep of selected mediation cases



## **Projet de Recherche**

### **‘Desistance and Restorative Justice : Mechanisms for desisting from crime within Restorative Justice Practices’**

#### **Guide pour les Médiateurs**

### **Le cadre du projet**

‘Desistance and Restorative Justice’ est un projet de recherche coordonné par le ‘European Forum for Restorative Justice’ et financé par la Commission Européenne. Le projet se réalise dans trois pays via une collaboration entre un institut de recherche et un service qui encadre des médiations ou des conférences: le Leuvens Instituut voor Criminologie (LINC, KU Leuven) et Médiante en Belgique, Queen’s University Belfast et Youth Justice Agency en Irlande du Nord, Institut für Rechts- und Kriminalsoziologie (IRKS) et Neustart en Autriche. Le projet est soutenu par l’organisation européenne de la probation (CEP).

Le projet a démarré début 2013 et sera finalisé fin 2014.

En Belgique, Antonio Buonatesta et Grégory Havelange coordonnent le travail pour Médiante. Katrien Lauwaert est responsable pour la partie recherche au sein de LINC.

### **Les objectifs de la recherche**

L’objectif principal de la recherche est d’explorer l’éventuel impact que la participation à une médiation ou une conférence peut avoir sur le processus de désistance.

La désistance signifie l’arrêt d’activités pénalement punissables pendant une période significative après avoir commis préalablement des activités criminelles de façon répétée.

La littérature concernant la récidive établit que la participation à des pratiques restauratrices peut diminuer la récidive. Néanmoins, il n’a pas encore été démontré quels sont les mécanismes qui produisent cet impact positif, ni dans quelles circonstances ils produisent leur

effet, pour quels groupes d'auteurs et dans quel type de pratiques. La présente recherche explore ces questions à travers une revue de la littérature et un volet empirique.

### **La recherche empirique**

Dans la partie empirique de la recherche, nous voulons interviewer 30 *desisters* qui ont participé à une médiation ou à une conférence dans chaque pays participant.

Sont considérés comme *desisters*: les auteurs avec des condamnations antérieures, mais n'ayant pas de nouvelles condamnations après la médiation (sauf celles liées aux faits relatés dans la médiation). Ils doivent aussi être en liberté depuis au moins un an.

Le plus grand défi de la recherche est sans aucun doute la constitution d'un groupe de 30 participants qui correspondent au profil requis, dont nous avons obtenu les données de contact récentes et qui acceptent de participer à une interview.

Les chiffres de la première phase de la sélection illustrent bien ce défi : des 536 médiations sélectionnées par les médiateurs, seules 73 auteurs sont des participants potentiels. Beaucoup d'auteurs sont éliminés parce qu'ils ont récidivé, parce qu'ils se trouvent toujours en prison ou parce qu'ils n'ont pas de condamnations antérieures (contrôle effectué via le casier judiciaire et via la base de donnée SIDIS de l'administration pénitentiaire).

La prise de contact des médiateurs avec les participants potentiels est dès lors d'une importance cruciale pour la réussite du projet.

### **Quel est le rôle des médiateurs de Médiante ?**

Certains médiateurs ont participé à la sélection de dossiers et nous les en remercions. Nous apprécions pouvoir à nouveau compter sur leur expertise pour la prise de contact avec les participants potentiels. Pour qu'une démarche uniforme soit respectée, voici les étapes à suivre:

L'intervenant ayant géré le dossier de médiation:

- prend contact par téléphone avec son ancien client/cliente ;

- explique au client que Médiante participe à une recherche afin de découvrir comment les auteurs ont vécu la médiation et quel impact cette expérience a éventuellement eu sur eux par après. Le but ultime est d'améliorer la pratique de la médiation en tenant compte de son expérience et de celle d'environ trente autres auteurs qui ont participé à une médiation. Cette recherche fait partie d'un projet international au sein duquel des personnes vont aussi être interviewé en Autriche et en Irlande du Nord.
- explique que le dossier de ce client a été sélectionné;
- demande ensuite si le client est prêt à participer à une interview avec un chercheur et explique à quoi il peut s'attendre en cas de participation (voir section suivante).

Si le client refuse de participer, le médiateur:

- demande la raison de ce refus. Cette information peut être intéressante parce qu'elle peut indirectement donner des indications sur la signification de la médiation pour la personne en question ou le chemin qu'il/elle a parcouru depuis la médiation.
- informe Katrien Lauwaert par courrier électronique du nom du client et des raisons du refus.

Si le client accepte de participer, le médiateur :

- vérifie par téléphone l'adresse et le numéro de téléphone du client (un numéro de gsm peut être plus pratique que le numéro fixe) et recueille si possible une adresse de courrier électronique.
- envoie au client le même jour un courrier de confirmation. Une lettre standard est fournie à cet effet.
- envoie le même jour un courrier électronique à Katrien Lauwaert contenant les coordonnées (adresse, numéro de téléphone, éventuellement adresse de courrier électronique) du client ayant marqué son accord.

A partir de ce moment, Katrien reprend le processus.

### **A quoi peut s'attendre le client qui participe à la recherche ?**

Le client sera contacté par la chercheuse dans les jours qui suivent son accord afin de fixer un rendez-vous. L'interview pourra avoir lieu au service de médiation ou dans tout autre lieu calme, à convenir entre la chercheuse et le participant. L'entretien prendra environ une heure.

Pendant l'interview nous voudrions découvrir comment le participant a vécu l'expérience de la médiation et quel impact cette médiation a éventuellement eu sur sa vie par après.

Le contenu de la conversation restera confidentiel, l'information recueillie sera uniquement utilisée pour cette recherche. La participation restera aussi anonyme, le nom du client n'apparaîtra pas dans les résultats de la recherche.

Le participant recevra la somme fixe de 20 euros comme gratification et pour couvrir d'éventuels frais de déplacement.

### **Pour clôturer**

Nous vous remercions d'avance pour votre précieuse collaboration. Si vous avez des questions, n'hésitez pas à nous contacter.

Dr. Katrien Lauwaert

Chercheuse LINC

016/325246

0472/434196

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Hooverplein 10

3000 Leuven

Antonio Buonatesta

Coordinateur Médiateur

## **Desistance and RJ**

### **Lignes directrices pour les interviews**

#### **Belgique**

Je vous ai contacté parce que vous avez participé à une médiation. Pour la recherche que nous faisons, nous sommes intéressés par votre vécu de la médiation et nous aimerions savoir si cette expérience a eu un impact sur vous ou sur votre vie après votre participation.

(L'anonymat est garanti. Il n'y a pas de bonnes ou de mauvaises réponses. Ce qui importe ce sont juste vos souvenirs. Ce qui nous intéresse vraiment c'est votre expérience personnelle.)

Pourriez-vous me raconter comment on en est arrivé à cette médiation, comment elle s'est déroulée et comment les choses ont évolué après ?

Commençons par voir comment la situation était avant votre participation à la médiation.

#### **AVANT la médiation**

**Pourriez-vous me parler de la situation dans laquelle vous étiez lorsque vous avez accepté/demandé de participer à une médiation ? (conditions de vie, situation)**

Avez-vous vous-même fait les démarches pour participer à la médiation ?

- Si oui, pourquoi avez-vous fait ces démarches (motifs)
- Si non, pourquoi avez-vous accepté de participer à la médiation ?

Quels sont la situation ou le mode de vie qui vous ont amené à participer à la médiation ?

(Nous aimerions en apprendre plus sur le type de méfaits, les méfaits antérieurs et la façon de vivre de la personne à l'époque, la motivation pour participer, est-ce que la personne était déjà dans un état d'esprit à vouloir arrêter de commettre des infractions/de changer son style de vie avant d'accepter/de demander de participer à la médiation ou non ?)



## **PENDANT la médiation**

**De quoi vous rappelez/souvenez-vous à propos du processus de la médiation, c'est-à-dire le processus de préparation, la médiation en elle-même et ses résultats ?**

### *La médiation en elle-même*

Avez-vous rencontré le médiateur plusieurs fois?

Comment se sont passés vos rencontres avec le médiateur ? (Est-ce que le médiateur est une personne respectée ?)

Est-ce que le médiateur vous a permis de parler de choses qui vous tenaient à cœur avec la victime ? (Qui a décidé de quoi vous alliez parler ?)

(Est-ce que la justice réparatrice est une manière active de participer au processus, de prendre ses responsabilités et est-ce que c'était important pour le participant ?)

D'autres participants étaient-ils présents lors de la médiation, à part le médiateur et la victime? (famille...)

Leur présence a-t-elle fait une différence, pendant ou même après la médiation ?

Avez-vous rencontré la victime ?

Comment avez-vous vécu la rencontre avec la victime ?

Avez-vous apprécié particulièrement quelque chose pendant la médiation, pensez-vous que certaines approches ont mieux fonctionné que d'autres ?

A l'inverse, qu'avez-vous le moins apprécié ?

Comment votre médiation aurait-elle pu être améliorée ?

Est-ce que votre vision de la médiation était la même quand elle avait lieu (ou tout de suite après) que maintenant ?

### *Réparation*

Avez-vous accepté un plan de réparation?

Avez-vous trouvé cela juste?

Vous sentiez-vous obligé de réparer? Vouliez-vous vraiment le faire?

Comment vous êtes-vous senti après avoir rempli le plan de réparation ?

Avez-vous trouvé l'accomplissement du plan de réparation difficile?

Comment vous êtes-vous senti après avoir fait la réparation ?

(Ce que nous voulons savoir à propos de la réparation : le participant la voit-il comme une opportunité de réparation? Ou simplement comme une obligation à laquelle il ne peut échapper. Cela a-t-il été une opportunité d'être 'compétent/à la hauteur' ?)

Comment se sont passés vos entretiens/contacts avec l'équipe de Médiate pendant la médiation ou la période de réparation ?

### *Idées par rapport à la justice réparatrice*

Basé sur votre vécu de la médiation

- Pensez-vous que la médiation était une bonne façon d'aborder vos méfaits ? Pour quelles raisons ?
- Y a-t-il des choses dont vous avez tiré profit ?
- Comment voyez-vous cette manière d'aborder la criminalité en général ?

Pensez-vous que c'est une bonne idée ou pratique pour des personnes qui ont commis un crime :

- De rencontrer leur(s) victime(s)
- De reconnaître leur culpabilité en présence d'autres personnes et de présenter leurs excuses
- D'accepter de réparer les dommages causés ?

Finalement

La médiation vous a-t-elle appris quelque chose que vous avez pu appliquer dans votre vie?

La médiation a-t-elle déclenché quelque chose ?

Si vous aviez des conseils à donner à une autre personne avant sa médiation, quels seraient-ils ?

### **APRÈS la médiation**

**Votre vie a-t-elle (beaucoup) changé depuis la fin de la médiation?**

**Si oui,**

Qu'est-ce qui a changé?

Pourquoi avez-vous décidé de changer votre vie ? Pourquoi avez-vous pris cette décision ?

La médiation a-t-elle joué un certain rôle ?

D'autres interventions ou processus ont-ils joué un rôle ?

La médiation a-t-elle été un déclencheur ou une partie d'un processus déjà enclenché ?

Quel a été la chose la plus difficile dans le fait de changer votre vie?

Quel a été la meilleure chose apportée dans votre vie par ces nouvelles valeurs ?

Qu'est-ce qui vous aide à continuer sur ce chemin ?

Au cours des deux dernières années, y a-t-il eu des changements dans d'autres aspects de votre vie, par exemple

- Votre situation professionnelle
- Vos activités scolaires/éducation

- L'endroit où vous vivez/votre logement
- Votre participation à des activités comme du sport, des activités récréatives, du bénévolat

Par rapport à votre famille ou d'autres relations...

- Y a-t-il eu du changement ces deux dernières années ? En mieux ou en pire ?
- Avez-vous toujours le même cercle d'amis ou en avez-vous changé ?
- Comment et avec qui passez-vous vos journées ?

Y a-t-il eu quelqu'un ou quelque chose qui vous a inspiré ces dernières années?

Y a-t-il certaines personnes/groupes/organisations qui vous ont soutenu dans votre nouvelle vie ? (famille, 12 step, église, clubs de sport etc.)

Que pensez-vous maintenant de votre passé criminel ? Quels sont les sentiments ou pensées qui vous viennent à l'esprit quand vous repensez à cette période de votre vie ?

Quand vous voyez ou entendez d'autres personnes qui commettent les mêmes faits que vous dans le passé, pourquoi pensez-vous qu'ils commettent ces faits ? Pensez-vous qu'ils causent du tort? Que pensez-vous qu'il faudrait pour qu'ils changent?

La drogue ou l'alcool ont-ils joué un rôle dans votre passé criminel ? Si oui, comment avez-vous géré la consommation de ces substances ?

Qu'est-ce qui vous motivé pour mener une vie correcte? Qu'est-ce qui est important pour vous aujourd'hui ?

Quelles sont vos priorités dans le futur ? Qu'aimeriez-vous réaliser?

(Beaucoup de ces questions partent du principe que leurs vies ont changé. Mais nous devons aussi nous préparer au cas où ils nous diraient que peu, si pas rien, n'a changé dans leurs vies)

### **EN TOUTE FRANCHISE**

- Avez-vous connu au cours des dernières années des situations similaires, mais par chance n'avez été ni poursuivi, ni arrêté ou condamné?
- Avez-vous été tenté de commettre de nouveaux faits ces dernières années?
- Y a-t-il eu des situations dans lesquelles il a été difficile de ne pas réagir avec d'anciens mécanismes, par exemple si vous vous êtes senti menacé ou avez été tenté de voler?
- Comment avez-vous géré ces situations? Qu'avez-vous fait à la place? Est-ce que votre participation à la médiation a-t-elle en quelque sorte contribué au fait que vous avez été capable de réagir différemment dans ces situations ?
- Avez-vous commis des infractions au cours de ces dernières années? (Je peux éteindre l'enregistreur lorsque vous répondez à cette question!)

Merci !

**Desistance and RJ**  
**Guidelines for the interviews**  
**Belgium**

I contacted you because you participated in a mediation. In the research I am doing we are interested to know how was the experience of the mediation/conference and whether this experience had any impact on you or on your life after your participation.

(anonymity is guaranteed, no true or false, what counts is your memory, what interests us is your personal experience)

Could you tell me how it came to this mediation, how the mediation went and how things evolved later on?

Let's start by how things were before you participated in the mediation/conference.

**BEFORE the mediation**

**Could you tell me about the situation you were in when you agreed to /applied for mediation?** (living conditions, situation)

Did **you** apply for the mediation?

If yes, why did you apply? (motives)

If no, why did you accept to participate?

What was the situation or the lifestyle that led you to be involved in RJ?

(We want to find out about the type of offences, previous offences and lifestyle, motivation to participate, was this person already in a state of mind of willing to stop committing offences/changing lifestyle before applying/agreeing to participate or not)

## **DURING the mediation**

**What do you recall/remember about the whole process of preparing for the mediation, the mediation itself and the outcomes of it?**

### *The mediation itself*

Did you meet several times with the mediator?

How was the contact with the mediator? (Is the mediator/facilitator a respected person?)

Did the mediator allow you to put on the agenda of the meeting/communication with the victim what you found important? (Who sets the agenda?)

(Is RJ an occasion to participate actively, to take responsibility and was this important for the participant?)

Were there any other participants in the mediation besides the mediator and the victim?  
(family, ...)

Did their presence make a difference, during or even after the mediation?

Did you meet the victim?

How was it to meet the victim?

Was there anything in the mediation that you liked or thought worked well?

Was there anything in the mediation that you didn't like or thought didn't work well?

What would have made your mediation better?

### *Reparation...*

Did you agree to any plans for reparation?

Did you think it was fair?

Did you feel pressured to repair? Did you really want to do it?

How did you feel afterwards about having fulfilled the reparation plan?

Did you find completing the reparation plan difficult?

How did it feel afterwards to have done the reparation?

(what we really want to know concerning the reparation: did they see it as an opportunity to ‘pay back? Or simply an obligation they couldn’t escape... Was it an opportunity to ‘be competent’?)

How did you get along with the staff of Médiante at the time of your conference or during your reparation period?

*Views on RJ...*

Bases on your experience mediation...

-do you think the mediation was a good way to address your offences? Why?

-was there anything you believe you really benefitted from?

-how do you view this way of addressing crime overall?

Do you think it is a good idea or practice for people who have offended to...

-face victims / to face their victim(s)

-admit guilt in the presence of others and apologise

-agree to repair the harm caused

*Finally...*

Has restorative justice taught you any lessons that you have been able to use in your life? Did it trigger something?

If you had some advice for a young person before they went to a mediation, what would it be?



**AFTER the mediation**

**Has your life changed (much) since you finished your involvement with mediation?**

**If yes,**

What has changed?

Why did you decide to change your life? Why did you make that decision?

Did your experience with the mediation/conference play any role in this?

Or did other interventions or developments play a role?

Was the mediation a trigger or part of an ongoing process?

What has been the most difficult aspect of turning your life around?

What has been the most enjoyable (best part) aspect of living according to your new values?

What helps you for staying straight?

Specifically, over the last 2 years, have there been changes in other aspects of your life, e.g.

- your employment situation
- your school activities / education
- where you were living / your housing/accommodation
- your involvement in activities like sports/recreation/volunteer work

In regards to your family and other close relationships...

- have there been changes over the last 2 years? For better or worse?
- do you have the same circle of friends or have you moved on?
- how, and with whom, do you socialise these days?

Is there anything, or anyone, that has inspired you over the last few years?

Are there any people/groups/organisations that have been supportive in helping you stay on track? (family, 12 step, church, sport clubs, etc)

How do you now view your past offending? What thoughts or feeling arise when you think back to that period of your life?

When you see, or hear of, others committing crimes similar to your own past, what's your view on why they do it? Do you think they cause harm? What do you think it would take for them to change?

Was alcohol and/or drugs a factor in your offending? If so, how have you addressed your use of these substances?

What keeps you motivated to lead a good life? What is important to you now?

What are your priorities for the future? What do you hope to achieve?

(Many of these questions start from the idea that their lives did change. But we also have to prepare for the situation in which they indicate not much/nothing has changed.)

## **SELF REPORT**

- Were you in the past years in similar situations and were you only by chance not prosecuted /arrested or convicted?
- Have you been tempted to offend in the last few years?
- Have there been any situations where it was difficult to not react with old behaviours, such as if you felt threatened or were tempted to steal?

- How did you cope with these situations? What did you do instead? Did your participation in the mediation somehow contribute to the fact that you were able to deal differently with these situations?
- Have you committed any offences over the last few years? (I can turn off the microphone when you answer this question!)

Thank you!

*Appendix 7: Receipt for the gratification received by the participant after the interview*

**Accusé de réception**

Je confirme avoir reçu en argent cash la somme de 20 euros comme signe d'appréciation et pour couvrir mes frais de transports éventuels ; et cela pour avoir participé à une interview dans le cadre du projet de recherche 'Desistance and Restorative Justice : Mechanisms for desisting from crime within Restorative Justice Practices'.

Date :

Nom et signature :

## **Formulaire de consentement éclairé**

### **‘Desistance and Restorative Justice’**

**Ce formulaire de consentement éclairé explique les objectifs de cette recherche et vos droits en tant que participant. N’hésitez pas à poser des questions avant de donner votre consentement.**

Cette étude est une initiative du European Forum for Restorative Justice. Elle est effectuée en Belgique, en Autriche et en Irlande du nord. En Belgique, l’étude est réalisé par le Leuvens Instituut voor Criminologie (KU Leuven) en collaboration avec l’organisation Médiante.

Le but est de pouvoir améliorer la pratique de la médiation en tenant compte des points de vue des participants à une médiation. A cet effet, les chercheurs de la KU Leuven (Université Catholique de Leuven) organisent des entretiens avec des personnes qui ont participé à une médiation et qui n’ont pas encouru de nouvelles condamnations depuis. Pendant l’interview, des questions seront posées concernant votre situation avant la médiation, votre ressenti au cours de la médiation et votre vie par après.

Si vous êtes d’accord cet entretien sera enregistré pour que les chercheurs puissent en analyser le contenu et comparez les points de vue des différents participants. Le contenu de l’entretien restera confidentiel. Seul l’équipe de recherche aura accès à l’enregistrement et à la transcription, qui seront gardés dans des ordinateurs dont l’accès est protégé par un mot de passe. L’équipe de recherche utilisera l’information récoltée uniquement pour le but de la recherche.

Votre participation restera anonyme. Les écrits réalisés à partir des informations récoltées ne mentionneront ni votre nom, ni d’autres informations permettant de retracer votre identité.

Votre participation est volontaire. Cela veut dire que vous êtes libre de participer ou non, d’arrêter l’interview à tout moment et de ne pas répondre aux questions qui vous mettent mal à l’aise.

---

J'ai lu ce document et j'accepte de participer à l'étude 'Desistance and Restorative Justice'.

Je confirme avoir reçu une copie de ce formulaire de consentement éclairé.

Nom :

Signature :

Date :

## **Chapter 6 – Northern Ireland**

Brendan Marsh

### **6.1. Youth conferencing in Northern Ireland**

In the aftermath of the Civil rights Movement in 1969, an ethno-religious military conflict raged in Northern Ireland from 1970 until the late 1990s. The forces of the protestant majority, both state and paramilitary, fought against the paramilitary forces of the catholic minority resulting in the loss of over 3000 lives. The Good Friday Agreement, signed by most parties to the conflict in April 1998, has permitted peace to become the norm in Northern Irish society. Emerging from the criminal justice provisions in the agreement, the Northern Ireland Youth Conferencing Service (YCS) began operating at the end of 2003 under the direction of the Youth Justice Agency. Initially concentrated in Belfast, by 2006 it was serving the entire jurisdiction of Northern Ireland. The development of this restorative justice service emerged out of the review of criminal justice in Northern Ireland that was agreed in the 1998 ‘Good Friday’ Peace Agreement, and was passed into law by the 2002 Justice Act. The model of restorative justice practice chosen for young people in Northern Ireland is Restorative Conferencing. This involves a face-to-face meeting between the victim and the offending young person; all parties to an offence come together to discuss and resolve the damage done to victims, community and society. The conferencing system is integrated into the criminal justice system and is based on the New Zealand family group model of restorative justice, however the family is not emphasised as being of primary importance. The Northern Irish ‘balanced model’ seeks to give equal importance and emphasis to the young people who offend, victims, and their communities. The prevention of further offending is a central aim of the Youth Justice Agency, as is directing and supporting young people who have offended in their attempts to make amends for the harms they caused. Conferencing in Northern Ireland is a juvenile justice strategy; it has not as yet been broadened to include adult offenders. Conferencing is therefore available to young people from age 10 until they reach adulthood at age 18, and can be used as a response to all offences excluding manslaughter and murder. Also attending may be interested others such as community representatives, family members and supporters of both parties. A police officer is always present at a conference, as is a professionally trained conference coordinator who facilitates the conference. In certain

circumstances either party may be allowed to bring legal representation to a conference, and also social workers or probation officers may attend where appropriate.

In Northern Ireland, as in the rest of the United Kingdom, official statistics are recorded based on the tax year rather than the calendar year, that is from April to the following April. Therefore the number of cases dealt with per year by the Youth Conferencing Service during the period concerning this research is as follows:

Year	Referrals
2006/2007	1934
2007/2008	1636
2008/2009	1840
2009/2010	2012
2010/2011	1734
2011/2012	1557

Conferencing seeks to provide positive outcomes for all participants, including meeting the needs of victims and communities that have been harmed by a young person’s actions. In relation to the young people themselves, the Youth Justice Agency considers rehabilitation for young people to be a key strategy for reducing reoffending, and therefore, a positive outcome from conferences often include rehabilitative opportunities for young people. Reparation for harm done is also considered as both part of the justice of restorative justice, but also as a method for repairing harm and facilitating reintegration into the community. During a conference, participants discuss the crime and each person is encouraged to elaborate on how the crime affected them personally. Young people are encouraged to explain the reasons why they committed the offence and they are afforded the opportunity to apologise for the harm their actions have caused. Participants then endeavour to come up with a plan of action for the young person that will include reparative and/or rehabilitative measure that the young person must undertake to follow. As making reparation for the harm that the offence caused, and seeking to prevent further offending, are the central aims of this model of conferencing, every effort is made to construct a reparation plan that, so far as is possible and practical, meets the wishes and needs of the victim while taking into account the circumstances of the young person who has offended.

A successful conference results in a conference plan. This consists of one or more of the following:

- an apology to the victim;



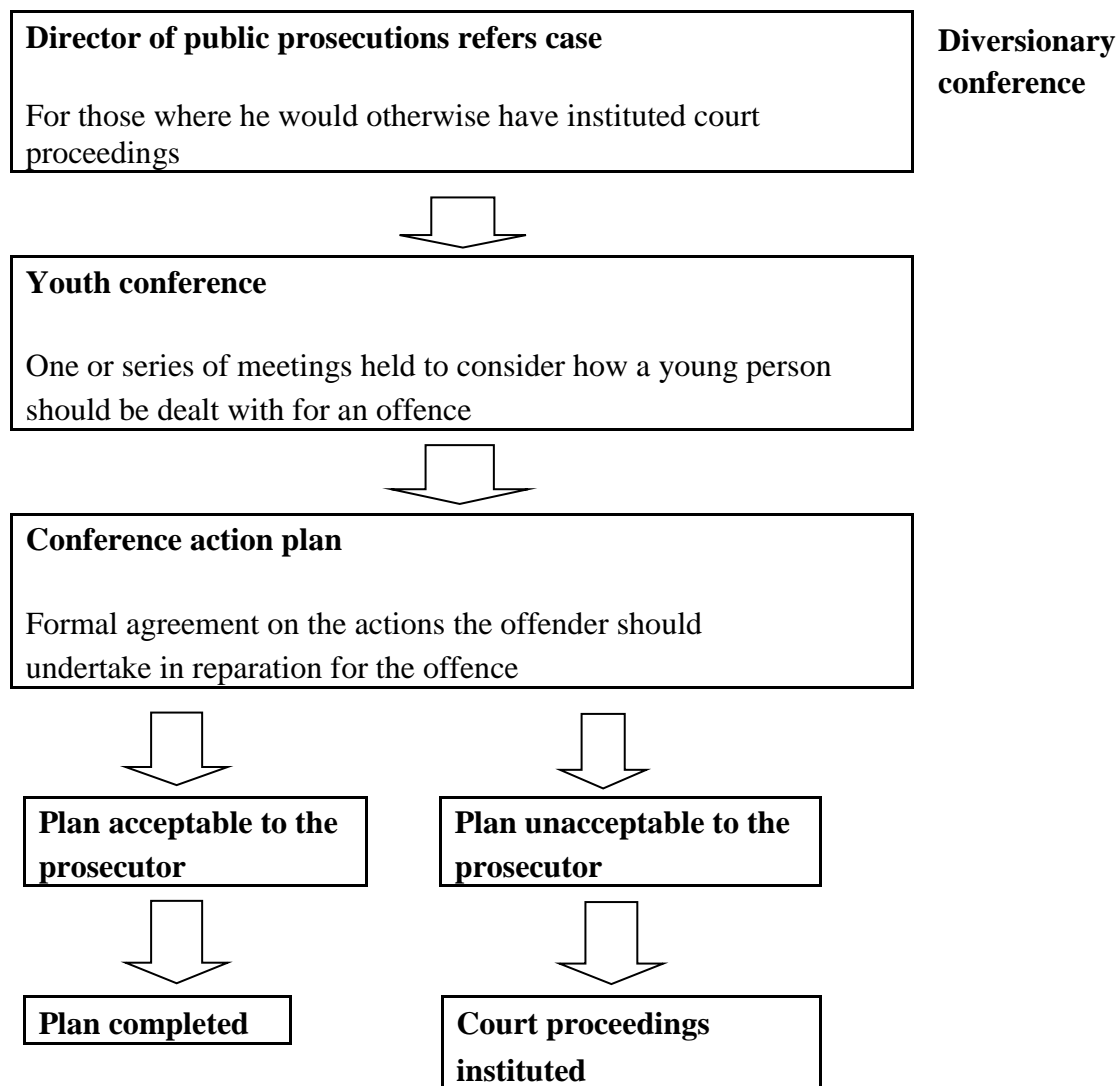
- reparation to the victim or to the community;
- payment to the victim in compensation;
- supervision by an adult;
- work or service for the community;
- participation in activities – those addressing offending behaviour, offering training / education, or dealing with problems such as drugs or alcohol;
- restrictions on conduct or whereabouts (for example curfews); or
- treatment for mental problems or for alcohol or drug dependency.

(Maruna et al., 2007)

Preparation is often crucial to a successful conference and staff at the Youth Justice Agency work with young people who have offended, and with victims to prepare them for the conference experience. Indeed, as conferences can include a diverse range of interested and affected parties, such as social workers, community representatives, victims family members, preparation for a conference can involve many face-to-face meetings with conference participants. Furthermore, suitable rehabilitation and reparation options are identified before a conference, whether it is drug intervention, educational opportunities, or community payback work. The conference coordinator has the task of making all the preparations for the conference, facilitating the running of the conference and ensuring that a reasonable reparation plan that is acceptable to all participants is agreed upon. A member of the police is present at each conference and has the task of outlining the offence and the details of the arrest. An adult must attend the conference with the young person, usually a member of the young person's family or a mentor figure such as a youth worker or care worker.

Each young person that engages with the Youth Justice Agency is assigned a member of staff. Staff members role is to prepare the young people and their families for the conference, to attend the conference and support the young person, and then to oversee the completion of the agreed reparation plan. These staff members are to be differentiated from the conference coordinator whose role is to facilitate the conference.

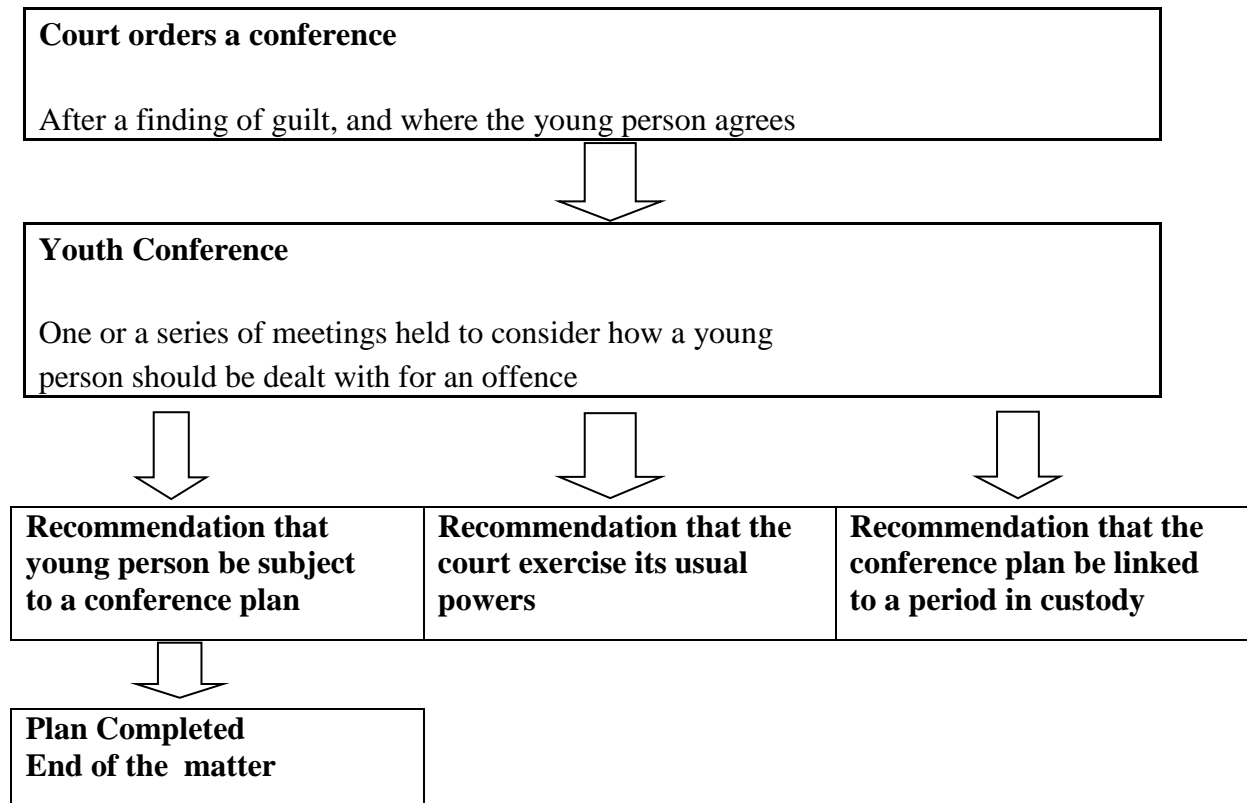
Young people in Northern Ireland can be referred to a conference in two ways: either as a diversionary measure where they have admitted guilt or as part of a sentence handed down by the court. Importantly, however, in both instances, young people have the right to refuse to participate in conferencing.



Diversionary Conferences: if a young person admits guilt for an offence he or she can be offered a diversionary conference. This decision lies with the Director of Public Prosecutions, and is made where a court appearance would have been demanded for the offence if the conference was not offered. In cases where the reparation is disregarded by the young person and the agreed requirements are not fulfilled, the prosecutor may insist on a court appearance for the young person. Nevertheless, there is flexibility for plans to be amended due to unforeseen circumstances in the young person's life that prevented the reparative measures being fulfilled in full. Reparation plans agreed by all parties at the conference may include quite severe measures against the offending young person, such as curfew. Importantly, participation in a diversionary conference is not reflected on the young person's criminal record, even though guilt was admitted. The Public Prosecution Service (PPS) can also refer young people to YCS as a diversion from prosecution, but this only applies where a young

person has admitted culpability. Importantly, diversionary referrals are only used where the PPS would otherwise have ordered a court appearance.

### Court Ordered Conference



(from, Maruna et al., 2007)

Court-ordered Conferences: When a young person has been found guilty of an offence, and with the young person’s agreement, restorative conferencing can be offered as a part of their sentencing. Referrals to YCS are made by the Youth Court where a young person has been found guilty of an offence. However the court is not obliged to accept the reparation plan that has been crafted by conference participants as a sentence for the offending young person. Reparation plans can be amended or completely rejected by the court if judged to be ill suited to the offence, offender, or the victim. The court, however, has the flexibility to judge that a conference may not be in the interests of either the offending young person or the victim. For example, in cases where the offence is of a seriousness or severity where conferencing may possibly traumatise a victim. In addition, if a young person has a history of conferences that has not appeared to make any difference to a pattern of persistent offending, then a judge may conclude that conferencing is not a viable or useful option.

With court ordered conferences, however, the conference is part of the sentence and the offence is recorded on the young person’s criminal record.

## **6.2. Sampling and research procedure**

Participants for this research were accessed using an innovative and creative sampling procedure that involved staff members from Youth Justice Agency using their past and present knowledge to be able to identify suitable young people. As this research seeks to learn from desisting young people, in other words the success stories, we decided to take advantage of the knowledge that Youth Justice Agency staff have of young people with whom they built lasting and close relationships over a number of years. The decision to use this method was partly practical; there were difficulties accessing criminal records due to system maintenance and upgrading that had been going on for some time. However, desisting individuals are, by the very state of desisting, no longer obliged to collaborate with criminal justice agencies in any way and are usually a hard to reach and hidden population. Using this approach and relying on the pre-existing relationships between Youth Justice Agency staff and research participants we judged that these access issues could be overcome. It was also judged that this strategy would be reliable in achieving our goal of accessing young people with a persistent pattern of offending in their past. Desistance as a concept has little meaning if the individual was not involved in repeat offending (Laub & Sampson, 2003). Drug use brings another layer of complexity, and desistance from crime and recovery from addiction are usually complimentary processes in an individual's life (Marsh, 2011).

While initially this strategy produced excellent results, recruitment for the research slowed considerably after the first twelve participants were interviewed. Once again, this speaks to the difficulty of recruiting desisting individuals who are willing to open up about their past. The Youth Justice Agency made consistent efforts to contact suitable young people and arrange interviews. There were a considerable number of interviews that were cancelled due to young people not showing up. In total, for this research, twenty four young people have been interviewed. While this falls short of the target number of thirty interviews, it must be stressed that recruitment strategies were exhausted and it became increasingly difficult to locate and recruit young people. Recruitment for the research targeted young people in many parts of Northern Ireland and included various Youth Justice Agency offices in many locations throughout the country. The decision to stop recruitment was made by the project steering group as it was clear that the considerable human resources applied to this task were no longer producing results.

Interviews were conducted and transcribed by the field researcher attached to this project in Northern Ireland. Interviews followed a semi-structured format ensuring both that all participants were asked the same basic set of questions, but also that the questioning was flexible enough to allow participants to tell their particular stories. Interviews were transcribed and qualitatively analysed for patterns and themes in the responses. This inductive analysis took a ‘grounded’ approach, that is, the interviews, and not some pre-existing theoretical material, were the starting point for the analysis. Only themes that emerged (from the ‘ground up’) out of these interviews are presented in this report, and primacy was given to the voices of the participants, not to academic experts. All research was managed in compliance with the Queen’s University Belfast School of Law’s protocols on ethical research practices, information management and data protection. Interview participants were assured that only the research team would have access to their full transcripts and that any material quoted from the interviews would be anonymised and disguised in the final report.

The biggest challenge in this research is endeavouring to understand the impact that participation in conferences had on the lives of these young people. Needless to say, conferencing was at least two years in their past and, indeed, many of the interviewees had to reflect back over the last decade of their lives to answer interview questions. In addition to the obvious difficulties that any individual will have in recalling events after the passing of considerable time, the young people’s repeated experiences of conferences, drawn out over an extended period of time, took place amidst the often chaotic context of their lives. For many in this larger sample, particularly the young people in groups two and three (see below), their teenage years were characterised by repeated infractions of the law, regular drug and alcohol abuse, homelessness, and family conflict. For the more serious offenders of group three they also experienced incarceration, hospitalisation due to drug overdoses, threats from paramilitaries, and violent victimisation.

### **6.3. Findings**

During analysis, three distinct groups of young people emerged based on offence type and duration of offending behaviour, referrals to the Youth Justice Agency and number of conferences, substance misuse, and to a large extent, desistance journeys also. It is only in the third group of more serious offending careers that there is considerable variety in both the reasons for offending cessation and the methods of desistance. Attitudes towards restorative justice conferencing and the reparation plans that accompany successful conferences varied

considerably within and across groups. For example, all of the young people in group one, that is young people who had a small number of offences, communicated a deep appreciation for the suffering they had caused and real empathy with their victims as a result of the conferences, however some of them did not have a good opinion of the reparation plans they agreed to complete. Those in groups two and three communicated quite a wide variety of opinions and attitudes towards all aspects of their involvement with the Youth Justice Agency.

#### Group One (n=8)

These are young people who had 2 or 3 conferences and who desisted thereafter. Facing victims and reintegrative shaming appears to be particularly successful, however, consideration over the future negative effects of criminal records, and the threat of more serious sanctions, also deterred offending. They participated in a maximum of three conferences and had no other arrests or criminal justice interventions outside of the conferences. The offence of riotous behaviour, that is, involvement in sectarian riots, was frequent amongst this group and accounted for most offences. Due to the fluid and unforeseen nature of engaging in riots, some of the young people were charged with serious offences such as assault and grievous bodily harm due to throwing petrol bombs and other projectiles at police. Other young people in this group had offences such as property theft and criminal damage. Otherwise these young people displayed a relatively normal adolescence and were engaged in various activities such as mainstream school, sports, and youth groups. These young people had no engagement in any other type of criminal behaviour throughout their adolescence.

#### Group Two (n=10)

The second group consists of young people who had a pattern of persistent offending throughout their teenage years. They were engaged in regular substance misuse, and their offences included theft, criminal damage, drug offences, burglary, and some violence. Their primary criminal justice intervention was diversionary youth conferencing, however there were also court ordered conferences. The number of conferences they participate in ranged from between 4 and 10. Therefore, these young people participated in many conferences and reparation plans throughout that period of their lives. During interview, they recalled a considerably more chaotic and troublesome youth than those in the first group. These young people spoke of chaotic and conflict dominated childhoods and emerged from families where

alcoholism, drug use, unemployment, domestic abuse, and absent parents was widespread. In addition, some of them spent short periods in young offenders' institutions and most were excluded from mainstream education. Their eventual cessation and desistance from crime can be attributed to a range of factors including the (incremental) positive effects of facing victims; the positive influence from youth justice agency staff; the negative effects of trauma and violent victimisation; and the significant personal growth achieved through the counselling and personal development education they participated in as a result of their reparation plans. Importantly, for this group, fear of incarceration as they approached adulthood was a definite deterrent to further offending. Conviction type for these individuals varied considerably and included drug possession and distribution, burglary, hijacking and vehicle theft, violent assaults, criminal damage and riotous behaviour.

#### Group Three (n=6)

The third group consisted entirely of young men, all of whom could be accurately described as prolific offenders in their past. Criminal justice sanctions included both diversionary and court ordered conferences, as well as repeated incarceration and probation. Each of these men were incarcerated at some point in their lives, most more than once, and all had chronic drug abuse problems and were involved in drug dealing to fund their own drug habits. Moreover, each of these young men was under threat from paramilitary organisations and, interestingly, their families of origin were either paramilitary or involved in organised crime. Also common across this group was the violent nature of many of their offences, ranging from car hijackings, stabbings, fire arms offences, and various degrees of assault and interpersonal violence. Their desistance was initiated and then sustained by a complex range of factors including new fatherhood; mental and physical burnout from drug use; and opportunities to gain self-understanding and construct narrative through insights in conferencing and relationships with Youth Justice Agency staff. In addition, the cumulative effects of psychological, emotional, and physical pain due to the hardship of their lives contributed to a decision to leave crime behind. This 'hardship' included losing friends and family members to drugs; being the victim of violence; and the ever present threat of paramilitary violence. In addition, fear of incarceration was also an important factor for many of these young men as they had reached a point in their offending careers where they were placed on suspended sentences totalling many years. While they were able to brush off relatively short periods of incarceration, or incarceration in youth detention facilitates, the prospect of serving many years in an adult prison had a definite deterrent effect.

Desistance from crime is a complex process of human development that takes the analysts best efforts to understand the many factors that contribute towards this journey of personal and social change. While of course it is possible to pinpoint factors that contribute towards an individual's desistance journey by engaging in research with desisting people, it is always far more difficult to measure the impact that each of these factors have on the life path of the person. In other words, while we, for example, know that marriage is important for some desisting people we also know that many persistent offenders are also married. Indeed we know that many desisting people are not married. Therefore, understanding the importance of marriage for desistance means teasing out the meaning of marriage to the person. Furthermore, many people attempting to desist from crime will leave a marriage or relationship to give them a better chance of success. Therefore there are many complex factors associated with marriage and desistance from crime, as with religion, employment, drug use, and criminal justice interventions such as restorative justice.

This research is tasked with investigating the positive effects of participation in restorative justice on young people who are now desisting from crime. However, it must be understood by the reader that the phrase 'participation in restorative justice' is not as straightforward as it may seem. It is necessary to tease out the positive effects that conferences had and differentiate between conferences and reparation plans. The Northern Irish model of conferencing places strong emphasis on the agreed action plan that is the outcome of a conference, and within that action plan its many rehabilitative elements and measures. It is no exaggeration to state that all of the young people involved in this research benefitted from their involvement with the Youth Justice Agency regardless of their experience with conferencing and reparation. Conferencing is of course an important and central part of restorative justice practice in Northern Ireland. As will become clear from the following sections, many young people benefitted from the conferencing experience while viewing the reparative measures that followed the conference as quite forgettable. However, the opposite is also true, particularly among more serious offenders and drug users who during interview expressed the view that their many conferences were irrelevant and impacted upon them little, while aspects of rehabilitation they engaged with as part of their reparation plans provided opportunities for change. Further, there are young people who claim that it was the relationship they built with staff from the Youth Justice Agency that had an impact on their lives rather than conferences or conference outcomes. If this research was limited to examining the positive impacts of the actual experience of conferences then results would be



far less positive than they are at present. A minority of the young people interviewed expressed a particularly negative opinion of restorative justice conferencing and reparation actions, yet they all, upon reflection, could appreciate the support they received from staff at the Youth Justice Agency.

Many of the young people who participated in this research had difficulty remembering the details of the many conferences that they had participated in. Interviews were conducted at least one year after their last offence had been committed, however, for many of these young people, their conference experiences stretched out over the previous decade of their lives. All of the young people interviewed were in the 18 to 24 age range and had been involved in conferencing from age 13 to age 17. Therefore, for some of these interviewees, they were asked during interview to recall events that had occurred more than a few years in their past.

*'How did you find the experience of the second conference?'*

*'I can't really remember it, it's kind of fuzzy. It was just the basics; go here and do that, that kind of stuff.'* (Female, group 1)

In addition, especially for the young people who had been involved in persistent offending, their adolescence was characterised by social and personal instability, that is: family conflict, community conflict, drug use, homelessness, and repeated criminal justice interventions of many kinds. These factors not only shed light on the difficulty that many research participants had with memory and recall, but also illustrate the challenge of attempting to trigger and support change in the lives of young people who offend through a criminal justice intervention such as restorative justice. Restorative justice conferencing is a limited and indeed quite humble intervention when juxtaposed against the often extreme chaos and deprivation of these young people's lives.

This section will first present findings that highlight how restorative justice conferencing did, and did not, impact on the desistance journeys of the young people interviewed in Northern Ireland. For some young people, the conference experience was enough to set them back onto a healthy developmental trajectory and no further offending occurred. For others, though they continued to offend after attending many conferences, there was a cumulative learning effect that contributed to their variance of offence types and eventual desistance. Some young people however appeared to receive no discernible benefit from repeated experiences of conferencing. Similarly, with conference or reparation plans, data will be presented that highlights how the reparative and rehabilitative aspects of these agreed plans of action

triggered and supported desistance from crime, and how they contributed towards the personal and social development of even the most prolific offending young people in this sample. Finally, this section will outline some of the other factors that are relevant to the initiation and maintenance of desistance from crime in the lives of these young people.

### *6.3.1. Conferencing: desistance*

For young people in group one in particular the shaming effect of facing a person whom they had harmed, whether it was through damage to property or actual physical harm, was felt very effectively. Many of these young people spoke of the difficulty they had with facing the victims; the anxiety they experienced pre conference, and the embarrassment and shame when they had to face the victim. They felt the weight of social stigma upon their shoulders and could not believe they had ended up in that position through their own actions.

*'I didn't know how to feel, didn't know how to explain why I done it. I was probably the most serious nervous I have ever been in my life. She asked me why I threw the petrol bomb and I didn't know what to say to her. I remember she had to be put out, she went on fire and the other police had to put her out. Having to face up to the officer, tell her why I was throwing petrol bombs, trying to explain myself, how do ye say sorry for it? I said sorry ten times for it but I still don't feel that the apology is enough. I wrote two letters of apology as well, one to the police officer and one to the community. I will never no matter what, even if I am really drunk, I will never throw a petrol bomb again in my life.'*  
(Male, group 1)

While of course many of the interviewees knew that their actions were illegal the real world impact of their actions was abstract and far removed from their reality. During conferencing they realised that their actions had a detrimental impact on real living people who suffered emotionally, financially, and even physically as a result of victimisation. Indeed they were often quite alarmed and shocked at the results of their offending. This was also true for some of the young people who had stolen from retail stores, a crime they had considered to be victimless and harmless. Listening to accounts of store managers and owners telling of how their business is struggling and losing revenue, and therefore their livelihoods and those of their staff are at risk, put a human face onto their crime and invited compassion, empathy and remorse:

*'The girl from the shop came the whole way from Newry. She told me that the people going to steal from shops that's getting took off their bonuses. The security man that ran after us that day he was only after losing his mammy the week before so you need to be careful and think of other people and not just think of yourself.'* (Female, group 1)

*'You have to meet the person face on face, the feeling of 'oh fuck I have to face this person'. You end up feeling like shit because you have hurt this person. It makes you think about what you have done so you won't do it again.'* (Male, group 1)

For many of the young people in this sample, particularly for those young people in group one, these experiences with victims during conferencing was difficult and induced shame. These young people expressed a strong determination to behave better in future and to never cause harm to a human being to such an extent. Clearly, they realised the enormity of their actions and felt a deep sense of remorse

### *6.3.2. Conferencing: learning effects*

For approximately two thirds of this sample, that is groups two and three, offending had continued to escalate after their first few conferencing experiences. This was an effect of their increasing age and the natural escalation of offence types and frequency, as well as their progression into more serious drug use, rather than any detrimental consequence of conferencing. In other words, participating in restorative justice conferencing in their early teenage years did little to reduce or slow down the development of their offending trajectory, though it seems not to have contributed towards their escalation either. Nevertheless, for some of the young people in group two, facing the victim and hearing of the detrimental impact that the offence had on their lives was an experience that these young people said they really needed. As their offence types became more serious with age they eventually met a victim, in a conference setting, upon whom they had inflicted serious personal harm. While these conference experiences did not lead to desistance from crime, they did provide opportunities for reflection that lead, in some cases, to change of offence types. Interviewees stated that court or other criminal justice sanctions would not have produced the same effect. This powerful quote from young woman from group two illustrates this point:

*'I felt like a really bad person. I was being told by all the staff about how it (assault) really affected her, like she didn't really want to go into town anymore, it had affected her life in so many different ways. I felt really really bad because obviously this was months after the crime and she told me she hadn't been going out or anything that whole time. So in a way I had kind of like put her life on hold without even thinking about it. That made me feel terrible because I am not actually that type of person at all.'*

*'What do you mean by 'that type of person'?'*

*'Well the first couple of conferences I was a bit like 'I did what I did, so what'. I went in and just sort of lied and they didn't know the difference, I would just smile and be a wee bit sarcastic, but it was that conference...that got to me because I realised I really hurt that person. And that is the only conference I really remember, it's the only one that stands out...after I saw what I had done to the girl*

*who was afraid to go out of her house I didn't want to ever do that again. I often fought people who would fight back, but she was really vulnerable and I just basically picked on her for nothing. The fact that my dad used to hit me and I used to cry because he hit me and then how could I just go and do that to someone else.'* (Female, group 2)

One of the young men in group 3, that is the former prolific offenders, is currently in his early twenties and has engaged in a substantial programme of personal and social development since he stopped offending. Although there were various influences on this young man throughout his offending years, both positive and negative, conferencing played a role in his movement towards a crime free life. A crucial part of his desistance journey has involved engaging in an introspective examination of his internal drives as well as a thorough moral inventory of his past life. While it is clear from his interview that he has suffered greatly in his life, beginning with a childhood characterised by deprivation and family dysfunction, he recognises the harm he has caused to others through his past violent offending. He pinpoints an experience in a conference that occurred when he was 15 years of age, so 9 years before interview, as being one of his first indications that his criminal behaviour was morally wrong:

*'At the conference there was my mom, the person I done it (assault, hijacking) on and his dad was there, a police officer and a social worker. I was 16 and I didn't care if I hurt him, I didn't care about someone's thoughts, now the one thing I did take was I think it was the first time I understood feelings. That was the first time I was touched inside.'*

*'What was it in the conference that touched you?'*

*'I didn't feel guilty for what I had done, I didn't feel guilty for taking his car, but I felt guilty that every time he went to traffic lights he was now looking over his shoulder. I felt that I had forced an illness on this guy. I don't know if he later developed an illness like paranoia or what, but I know that I triggered something in his mind and I felt guilty for that.'* (Male, group 3)

He is still engaged in the process of self-exploration and does not fully understand why he felt remorse in that conference. The fact that the memory remains with him with such clarity after so many years speaks to the impact that listening to that particular victim had on him.

For some of these young people, avoiding the permanent stigma associated with a criminal record was of utmost importance. This factor made the conference experience a valuable and worthwhile event as it meant that they would not experience the practical difficulties that a criminal record can bring when pursuing work and career. Furthermore, and possibly more essential for their sense of self, was the absence of a criminal record gave them the perceived freedom to start their lives again, to leave the stigma of the criminal offence in their past.

### 6.3.3. Conferencing: no positive effects

For some of the young people in this research conferences were viewed as irrelevant. Indeed many struggled to express themselves during interview and still lacked a coherent account of both their offending and their conference experiences. Some interviewees also resented the lack of justice in being required to accept complete blame for their offences. This was particularly true where the victim was a member of the police service who had, in the eyes of the young person, been aggressive and disrespectful in their interaction with the young person. For example, a young man from group 3 mocked the idea that he would feel sorry for the victims in his many conferences as all were police officers and he feels no remorse for the physical harm that he caused to them. His view was that they are a legitimate target as it is their professional duty to put themselves in danger:

*'Can I get your general view of Restorative Justice? Do you think it's a good way to deal with offences?'*

*'I think it is good, because at the end of the day its victims of the crimes....I can't honestly say because my victims in the conferences were police and back then I was probably thinking these scumbags are getting paid to get hit.'* (Male, group 3)

Indeed a strong theme across the data was the view of conferencing as the lesser of two evils. In addition, where some of the young people were charged with assault, they viewed the victim as a willing participant in a physical fight who became labelled as a victim simply because they had lost the battle. In these instances young people felt they were been unfairly blamed for the entire event and tended to play along with the conference proceedings in order to receive as little punishment as possible. Regardless of offence type, many young people did not want to attend court as they felt that they would receive a more serious sanction from a judge, namely incarceration:

*'Do you think facing and apologising to the victim is a good idea?'*

*'No, it's a loada crap, it doesn't do nothing, it did nothing for me. I had my first youth conference when I was 13 and it didn't stop me offending, my offending got worse. See them orders and plans I was forced to do them, it's either you do this or go to jail.'* (Male, group 3)

There were a number of instances of participants in conferences, particularly police officers and city council staff, interacting with the young person in a punitive and authoritarian manner. Young people who felt berated and unfairly treated in the conference were more likely to have a negative memory of the conference.

*'The police man was really really cheeky, he didn't give me a chance to explain. He kept on saying 'you did this and this, he was being a complete arsehole to be honest. There was me, my youth justice worker, my brothers' girlfriend, the police man, the shop boss. The manager was the nicest person you could meet, it was the police man who was making it all hard. He just kept butting in and asking the manager why he is accepting my apology so early. I jumped up and walked out, my youth justice worker came out and got me to go back in.'* (Female, group 1)

Conferences where the actual victim of the offence was not present were not taken seriously by these young people. Effectively these conferences were experienced as a type of bureaucratic necessity where their offence was discussed and a victim representative lectured the young person on the possible effects of their crime. Not only was the conference viewed as irrelevant by the young person, the seriousness of the offence was diminished in the eyes of the young person. To paraphrase many of the participants in this study; if the victim could not be bothered to show up then it really could not be that serious after all.

*'See the last conference when I was 17, your woman didn't turn up. See after that one, I made a plan and your woman didn't turn up. Fair enough she doesn't have to go, but you would think as the fucking victim she would want to be there.'* (Male, group 3)

Some of the young people who were regular drug users and who had many conferences had very little memory of their conferences and expressed the attitude that the actual conferences were irrelevant and quite forgettable. In fact a small number of participants who had this pattern of substance misuse expressed a serious lack of empathy for the victims of their crimes.

*'Obviously when people tell you how it affected them personally it does sort of make you look at it from a different perspective. When someone pours their heart out to you you just agree and nod, but as soon as you get up and walk out you just think he's an ejit. That's basically your mindset, I don't give a fuck what he thinks. I done it and I done it to you, deal with it. That's basically the way I think.'* (Male, group 2)

Furthermore, some of the young people in this sample clearly stated that their criminal behaviours were a direct result of the desire to acquire money for drugs. When they reflect back on the pattern of harm they caused to others they have a straightforward explanation; namely that it was the drugs that were responsible. One young man explained this in a conference to a victim whose home he had burgled:

*'I only did two conferences but I was offered more but I said no, I didn't like them. The second conference it was about an hour and a half, me just sitting there getting torn apart. I burgled a woman's house and she was there at the conference. I wasn't very apologetic, I was just straight with them and they didn't like it. I told them I was on drugs at the time and there's nothing I can do about it, I told her there's no point crying over spilled water. She was calling me a scumbag, a house*

*breaking wee cunt. I had to leave the room so she could calm down but she then left, she didn't want to hear what I had to say.'* (Male, group 3)

For another young man from group 3, involvement with restorative justice conferencing had a negligible effect of his offending or his desistance journey. While he could not recall much in terms of detail from the majority of his conference or reparation plans, the recollections he did have were largely irrelevant to his understanding of his desistance journey.

*'I was 9 years in homes and jails, I call it jail but it was young offenders' centres. I was getting hit with conferences in jail then more when I got out. They were more or less all the same, just different victims.'* (Male, group 3)

Indeed this particular young man displayed little remorse for his past offending and the harm he caused to victims:

*'I first got jail when I was 11, I caved my mother's head in with a poker, she had to get metal plates in her head. Between age 11 and 21 I was free for 3 years, the rest of the time I was locked up in homes and jails. Any of the conferences I ever went to on the outside I went to them rubbered [intoxicated], full of tablets. My attitude was 'fuck you', this is me getting out of court, it was an easy way out. I did about 20 conferences in jail and on the outside, they were more or less all the same, just different victims.'*

*'Did you regret the harm you caused to any victim you met in a conference?'*

*'I bottled a mate 3 or 4 times and kicked his head in, I got jail for that and he came down to the jail to do the conference. I was sorry for what I done cos I left him in a bad way and he was terrified sitting in the conference, but he shouldn't have tried to rob me. I told him in the conference; 'I warned you!'. I don't regret it and I told him that, it was his own fault.'* (Male, group 3)

This research demonstrates that restorative justice conferencing has a positive outcome for young people who were involved in few offences. However, for those displaying a persistent pattern of offending, the central elements of restorative justice, that is meeting the victim, had a more limited positive effect. While it did make an impression on some of the young people in this research, it was not a necessary nor sufficient condition for desistance to occur. Persistent offending develops over time due to many complex causal factors, and desistance is an equally complex process that is triggered and supported by many factors. From the young people interviewed for this study who had been engaged in persistent offending, facing a victim, indeed facing many victims over an extended period of time, had a limited impact on the psychological, emotional, and behavioural patterns.

#### *6.3.4. Reparation plans: desistance*

Many of the young people from groups two and three benefitted from their rehabilitative effects of their reparation plans. Plans that had a rehabilitative component, such as attending

counselling or anger management, were, for participants, remembered quite well and valued as integral to their life change. Consider the following quote from a young man who had a particularly negative recollection of his experiences in both conferences and community service:

*'I got lots of help to stop drugs [through YJA], I had drug awareness courses, psychologists. It sorta got me to a stage where I thought 'I can't go back again'. It was learning to deal with bereavement and cold turkey and get away from my mates.'* (Male, group 2)

Another young man from group 3 stopped offending due to the negative and degrading psychological consequences of chronic cocaine use. He was deeply embedded in networks of cocaine distribution and used cocaine regularly. Despite his violent reputation and his connections to professional criminals he spoke of the depression and mental anguish that he experienced for quite some time before he terminated offending and drug use.

*'When I got out [from prison] I just knew it was a road to nowhere, its groundhog day, the same faces, the same screws, the same system, it will get you down. Partying is the good side of it but then you will be coming home and crying after the weekend, at the time you are thinking that you are not depressed and it's not the drugs doing it to you but it's obviously the drugs doing it to you, you are not crying for nothing. The dugs really took it out of me, mentally like it just wasn't worth it any longer.'* (Male, group 3)

His state of mind deteriorated to such an extent that he was forced to accept the help that was on offer to him through the Youth Justice Agency. His participation in counselling and drug education through his reparation plans provided the opportunity to reduce and eventually cease his drug use and to build structured routines that permitted the rebuilding of physical and mental health.

*'I did the drug and alcohol counselling for about 6 months. I did have some slip ups in that time and I was honest about it. The counsellor just explained things to me, we did timetables and exercises to fill my day. It 100% helped me, I still use the timetables today. You need to keep your mind occupied, routine is very important.'* (Male, group 3)

It is clear that a minority of the young people interviewed were ready to cease their offending behaviour and took the opportunity that the rehabilitative elements of their reparation plan provided. However the more common outcome (detailed below) tended to be a process of cumulative learning through attendance at counselling or personal development work with staff from the Youth Justice Agency.



### 6.3.5. *Reparation plans: learning effects*

There was considerable variety in the agreed reparation plans that young people in this sample participated in. The majority of plans however contained an element of reparation to the victim such as apology letters and financial restitution. Reparation through service to the community was common to all plans agreed to by young people in this research. This community service was effectively the young persons sentence and most felt that it was imposed upon them by the adults in the room. The major theme relating to reparation work, community payback and community service work, was that it was not particularly memorable and did not appear to leave a lasting impression on these young people. Some of the young people however had a practical attitude towards their 'sentence' and expressed a mature attitude that appreciated the punitive sanction was the direct consequence of their actions;

*'Stay away out of trouble, basically that's all I can remember from the last conference. I did a million hours community service all together, I can't even remember how much. I did mine in a boxing gym, and another in a wee store.'*

*'Did you feel that the plans were fair?'*

*'It aint about fair it's about what I had to do. I had to realise that you can't just go on being a fucking menace to society.'* (Male, group 2)

Reparation plans that included community service were viewed by the majority of participants as punishment, the reparative intent towards the community was not appreciated and instead they saw the implication of unpaid work as a traditional sanction from the criminal justice system.

*'The third conference was for breaking a window in a take away in my area. The owner was at the conference and he explained that he had to close the business to get it fixed. My ma was really pissed off hearing about how I often behaved down at the take away. I got community service again, and I did an apology letter. I was working in a soup kitchen or something. It is a punishment because you have to put your hours in. It does feel like a punishment, you miss out on a load of stuff in your own life.'* (Male, group 2)

Nevertheless, for this same young person, participation in reparation plans led to the development of skills that were transferred to further education, training and employment by a small number of participants. This young man found his love of cooking as a direct result of being sent to work with homeless people as part of his agreed reparation plan. He stated that the skills he now possesses as an employed chef began to develop when he was working in a kitchen for the homeless and, importantly, he was unique among the wider sample in that his work placement had a definite positive impact on his attitude and perceptions:

*'Seeing the homeless at the community service really opened my eyes, it really helped me because I didn't want to end up like that.'* (Male, group 2)

This is quite a unique example from this sample of how community service as part of reparation can have a positive effect on young people if the activity itself is meaningful and designed to support the young person's social development.

Conference plans also had a strong rehabilitative element that reflected the age and the social characteristics of the young person. In other words, young people were often directed to return to education or participate in some form of emotional or psychological treatment. Referrals to drug and alcohol counselling services were very common in the reparation plans of young people from groups two and three. These referrals were, in most cases, suggested by the victims in the conference who expressed a desire for the young person to sort out their substance misuse problems. The young people interviewed stated that these services were one of the best supports that they received during their trouble years. Without the personal and social insight that they gained through participation they most likely would not have been able to change their behaviour patterns:

*'I had to go to a drug and alcohol service. I met a girl there and we used to meet up for lunch and just talk about things. When we did the friendship group I kind of realised who were the people who were influencing me to do what and what I done when I was in different groups of friends. I realised that I was using people too because I was only friends with them so I could go here and do that, I felt quite bad about it. The girl in the drug and alcohol service was lovely, I could chat to her about anything and it really helped me to see that changes and stuff. She taught me lots of stuff but the way she was doing it she wasn't kind of lecturing me, she was chatting like a friend.'* (Female, group 2)

Indeed the relationships between the young people and staff from the Youth Justice Agency were experienced as therapeutic by young people. Simply having someone to listen to their troubles and give support and advice in times of trouble was very important for the young people:

*'(Youth Justice Agency worker) knows where I'm coming from, she would know when I just needed a bit of space. Someone to sit down with, someone to talk to sometimes. When you don't even know where to go to you know there's someone out there for you. She was there for me, helped me through that. She's been a good support aye, the bond has been strong, definitely.'* (Male, group 2)

*'I love Youth Justice, they are all just brilliant. They explain everything and tell ye that they really are just trying to help ye. I can't stress how important it is for people to tell ye that, and I always felt really comfortable here. I liked all of them.'* (Female, group 2)

A crucial and valuable element of reparation plans, based on this data, is the range of supports that are offered to young people. One participant from group 3 participated in many

conferences and, as part of reparation agreements, engaged in various forms of counselling both in the community and within prison. Conferencing did not produce a sense of empathy and moral reflection, and neither did the years of counselling and psychiatric support. Nevertheless, when pressed about his involvement with the Youth Justice Agency over a number of years, he did speak about the many rehabilitative activities he took part in as a result of reparation plans and the benefit he got from them:

*'I done that cognitive therapy, I did anger management after anger management, psychiatrist after psychiatrist, fuck sake. The anger management was drilled into me and did help, I was using it without knowing I was using it. I stopped lifting my hands. I know I will end up killing someone.'* (Male, group 3)

His anger management training consisted of spending time with a member of staff from the Youth Justice Agency and looking at situations that triggered his anger, and practicing strategies and exercises for controlling his responses. Therefore, it appears that he did benefit to some extent from his many years of participation with the Youth Conferencing Service and Youth Justice Agency as a whole.

For another young man from this group of former prolific offenders and drug users, the ethos and atmosphere of the Youth Justice Agency had a profound positive impact upon his sense of self and belonging. This particular individual was disowned by his family when he started to use drugs and commit crime. The majority of his offences involved violence and his motivation was profit; he was regularly working for a group of professional criminals who moved the cars out of the country for sale. In addition, he sold drugs and used violence as a debt enforcement tool. During interview this young man gave a detailed and complex account of his early life and his offending career. Currently, he has not offended in over four years and is very involved in building a healthy prosocial life that involves education, career development, and participation in a religious community. He clearly credits his path to desistance not only to the relationship he developed with his Youth Justice Agency worker, but also to the ethos and humanising response he received from Youth Justice Agency as a whole:

*'Acceptance, a big thing for young people who commit crime is they feel neglected, of being not worthy of a chat or peoples friendship. I went into that door and nobody looked at me for the offences that I committed, everyone looked at me as a child that needed help...The problems that I was dealing with throughout my life was to do with what was inside, it was to do with my guilt and my violence, and to do with understanding who I was. Part of the youth conference plans was meeting the worker, that as the first part of change for me. I had seeds planted in my head and watered through the years that the person knew me.'* (Male, group 3)

This young man agreed, as part of a reparation plan, to meet with his assigned staff member once per week for a full year. The resulting relationship that built up between them was pivotal in that man entering desistance. The staff member was able to hold up a mirror to him on a weekly basis and reflect back to him the true nature of his offending behaviour, leading to an incremental change in the cognitive and emotional processes over time. That relationship represented the first healthy and durable relationship that he had in his life and the resulting effects were dramatic. The level of commitment shown by the staff member is truly admirable and they remain close friends until the present time:

*'Part of the youth conference plans was meeting the worker, that as the first part of change for me. I had seeds planted in my head and watered through the years that the person knew me. That person also pointed out the problems that I had that I didn't know. There was a lot of things to do with not feeling worthy, that was a really big thing. That person helped me to deal with that.'* (Male, group 3)

This appreciation of the practice of staff members from the Youth Justice Agency was evident in almost all of the interviews conducted for this research. The comments from the young people are too numerous to quote, however from the following two quotes it is clear that staff provided a welcoming supportive environment and sought to advocate for young people, educate young people, and hold them to account:

*'I like them here in youth justice, I really do. They hated us sometimes because we would come in stoned when we were meant to have appointments demanding tea and toast. They are really dead on, they would actually talk to me normally like the way you are with me now. We could talk about drugs, they weren't like social services at all. I would never tell my social worker anything because she would just report me. If I did see myself falling back again I would ask them for help.'* (Female, group 2)

*'The youth justice person explaining that to them makes it hit home and you realise that I may not be able to do things I want when I'm older because of a criminal record. They help you see things in a different way and you are not stuck in a wee bubble, you can see other ways of doing things. I had the same youth justice worker the whole time and she was lovely, we got on really well. I think that was good because if you had a different one each time you are not gona take it like really seriously because it's just this person sitting in front of you who you don't really know.'* (Female, group 2)

On balance, looking at all of the outcomes of this research, it seems to be the case that rehabilitative aspects of reparation plans had the most impact upon young people who had a persistent pattern of offending. The rehabilitative package offered to young people provided support in their ongoing struggles with the many issues they faced, such as substance abuse, and mental health. Included in this must be the therapeutic and supportive relationships with staff in the Youth Justice Agency.

### 6.3.6. Desistance: why and how

This research is essentially a desistance study, that is, we sought to understand how and why these young people entered and maintain desistance from crime and what, if any, role their participation in restorative justice may have played. It was clear from the interviews that a number of important factors, aside from restorative justice, were at play in the young people's lives that helped to encourage, initiate and sustain desistance from crime. The deterrent effect of pending incarceration was a definite factor in the cessation of offending for many of the young people who participated in this research. This was evident across all three groups of young people and across offence types. For the young people in group one, the experience of being involved with the criminal justice system was a traumatic one and one young man in particular was initially facing a lengthy prison sentence before the severity of the charges laid against him were reduced considerably.

For a lot of the young people in group two, fear of incarceration was an important factor in their cessation of offending. While it is clear that they benefitted from their participation in restorative justice it was not enough to make them reduce or stop their pattern of offending behaviour. They did genuinely appreciate the harm they had caused and were affected positively by their conference experiences, but once back into their regular routines of alcohol and drug use their offending continued and in some cases escalated. They were willing to take the risk of facing another conference and reparation plan and continued to offend in the knowledge that it would be very unlikely that they would be incarcerated for the level of offences they were committing. Indeed it was the approach of their eighteenth birthday that had the most profound effect on their behaviour patterns as they knew that the likelihood of receiving a prison term would greatly increase with their advancing age. This was particularly true for female participants in the sample.

*'I used to drink every day and do stupid things when I was drinking. I tried to stop drinking because I was basically told that if I get arrested again I am getting locked up, that I'm not getting another youth conference. I just don't want to be locked up.'* (Female, group 2)

For some of the more serious group of offending young people in group three, it was the prospect of a lengthy jail term that had a deterrent effect. While most of them had served time in prison already, all except one had served accumulated prison terms of less than two years. One of the young men stopped because of the threat of incarceration, he had a five year suspended sentence imposed by a court and he really did not want to spend that length of time in prison. His attitude towards desistance was not very positive and he stated clearly that he

has only stopped because he knows he will get jail time if he is caught again. Indeed his memory of his conference experience and the reparation plans that were assigned contained little that could be classified as positive. In his own words:

*'I've been off drugs nearly 3 years. I just stopped because I knew I was going to end up in jail, I'm under threat for a 5 year sentence, I think that's maybe, I don't want to go to jail.'* (Male, group 3)

For another young man it was the reality of prison that really made him re-evaluate the direction his life was taking and the consequences of his actions:

*'The last time in prison scared me a wee bit, I didn't want to go back there. I got into a few brawls in there, I was one of those people who didn't know how to keep my mouth shut. I remember I had two black eyes and there was a fella biting me, I got a bad beating. Then my family coming up and seeing me like that and asking me if I want to be here, do I want to live in a prison. That really made me think. That was a big reality check for me.'* (Male, group 3)

For another interviewee in this group the death of his close friend due to heroin had a serious impact on him; it gave him the opportunity to reflect on his life course and his behaviours. By his own account he was an extremely violent and aggressive man who spent 9 years incarcerated for violent offences. Moreover he had many violent incidents while incarcerated which prolonged his detention. His motivation for finally changing his behaviours was primarily related to his girlfriend and young children. Having being removed from his family of origin at age 11 due to a very violent attack on his mother he grew up in state care and young offender institutions. The opportunity to experience a family home when he was released spurred reflection upon his life path:

*'When I got out of jail I had never lived with my missus and the child, never. I've two kids now, I had never lived in a family setting. I got out and she had got a flat, then she got a proper house and I moved into that. She changed me in a way, but it hurt me when my child was coming up to see me in the jail saying 'daddy when are you getting out of hospital'. Then when I got out she was about seven and she told me she knew I was in jail. That hurt me. Now I've a little fella as well, he's two. I never knew my da and I always said I would never put my kids through that.'* (Male, group 3)

For him, offending and drug use was all he knew from a young age and progression to serious violence in his early teenage years was quite natural. Violence was a central organising principle in his home life and in his family's social relations in the wider community. Moreover, amongst his peers and friends violence determined security and safety in his immediate community. Therefore it is not hard to appreciate that violence was deeply ingrained in this young man's sense of self and subjectivity, and victims were simply people who deserved to be hurt at that particular time and place. Growing up at the hardest edges of Northern Irish society with family deeply embedded in paramilitary life took a serious toll on

his ability to empathise with others and feel remorse for harm he caused. Despite the fact that he has not offended in three years his appreciation of the harm he caused, particularly to innocent others through armed robbery and attacks on the person, is quite limited. Indeed, his social and personal progress since the start of his desistance journey, while steady, is a struggle.

*'My head is fucked sometimes, especially at night. I get home from work at 2am and sometimes I don't know what to do, 'what the fuck do I do now'. Some nights I just go out driving, I have my own car and I will drive for a few hours just to get whatever it is out of my system.'* (Male, group 3)

As was hopefully clear from some of the preceding quotes, the physical, emotional and psychological degradation suffered as a result of drug use was an important factor in the surrender of anti-social behaviours for some of these young people. Participants detailed what amounted to existential crises, a state of 'burn out', where they felt that they could not continue to live in the suffering that they found themselves in:

*'Once I got kicked out of the last house I was really at my lowest, my mum didn't want me back because I was a complete wreck head drug addict. I knew if I kept taking drugs at that stage that I never would have anything, I would have just been a tramp sleeping on someone's sofa... Sitting with the curtains closed getting stoned, stinking from not washing, it was just horrible.'* (Female, group 2)

A final quote from one of the young men from group 3 raises some interesting questions regarding desistance and restorative justice, that is, the goal of feeling empathy for ones victims and remorse for ones harms. Despite stating that he feels genuine remorse for the harm he has caused, he considers his past to be a worthwhile and essential prelude to his present and future journey. Everything he suffered, and made others suffer, was necessary to make him who he is today:

*'If I could live my life over gain I would do everything I have done, I would inflict everything on people that I inflicted on their lives. If I didn't go through it and done what I have done I wouldn't be this person to give advice and help people through their lives. I believe I went through it for a reason: to better myself so I could better other people, that's my view...I was lonely and I had been in a room for periods of time in my life including custody, isolation, four walls, and with loneliness comes facing yourself, facing you for who you are. If I can give advice on that and save one person's life throughout my life, that's a success for me. I've managed to help save numerous lives already and the feeling I get inside that no drug or no car can match. That's the biggest bit of it for me, feeling good about myself.'* (Male, group 3)

His confidence in remaining crime and drug free is very high and he expresses a high degree of active responsibility for his own life. Generativity, the desire to give back to others, is also very evident in this man's interview and the confidence he feels in his own ability to help others is clear to see.

## 6.4. Conclusion

The evidence presented in this report demonstrates that restorative justice can be an effective intervention, from a desistance perspective, into the lives of young people who engage in occasional or context specific offending. The impact of facing the person(s) victimised by their actions and realising the harm that they inflicted on others can have a profound effect on a young person's developing morality. It also has the potential to offer opportunities for reflection on their criminal offending. For the young people who engaged in more serious and consistent patterns of offending in the past lives, many conferences over a number of years appears to have had a cumulative effect for some. In other words, they faced many victims in many conferences and slowly they began to develop the realisations of the harm their actions had caused and the moral error of damaging the lives of others. For other young people, conferencing appears to have had no positive effect. The most prominent finding from this research is the learning effects that participation in rehabilitative activities as part of reparation plans had on the young people from groups 2 and 3. Included in this is the strong relationships built over time with staff from the Youth Justice Agency as well as participation in the many excellent counselling services that are made available. Importantly, there was no evidence in the entire sample of young people indicating that participating in conferencing or reparation plans actually made their offending worse by inducing stigma or labelling effects.

The young people's voices as reflected in this report encourage a humble assessment of the potential for restorative justice conferencing to trigger desistance in those who display more serious patterns of offending and substance misuse. At best, some interactions in conferences had a lasting impact on young people who had offended, and while it did not create an epiphany leading to desistance, it did create reflections in the young people and change of offence types. This was particularly true in relation to violence. Participation in the restorative justice process contributed toward their learning and maturation process over time. At worst, participation in restorative justice was viewed as a (sometimes literally) 'get out of jail free' card. Conferencing was the easier option, certainly easier than standing in front of a judge and being surrounded by the uniformed forces of law and order. People who are engaged in such a pattern of persistent offending and substance misuse witness the destruction their behaviours cause many times throughout their lives, especially through the despair and grief of their families. As Stanton et al. (1982: 7) write; 'The drama of drug addiction is obvious. It fills the stage with violence, stealing, arrests, intense emotional highs, periods of desperate craving, and possible death from overdose'. People who are engaged in this type of lifestyle and



offending are able to rationalise and neutralise their own moral objections and sense of guilt, and often develop a callous attitude to the suffering of others (Hobbs, 2013). As addiction specialists point out, denial, rationalisations, and justifications are endemic in prolific substance abusers (see, Rinn et al., 2002; Shaffer & Simoneau, 2001; Walker, 2010). Therefore, part of the 'complexity of therapy' (Minuchin, 1982: x) is a focus on attempts at breaking this denial through repeated exposure to the damaging effects that their actions have on themselves and others. Considering the time limited nature of restorative justice conferencing, the potential for effecting reflection in the substance misusing young person by exposing him or her to an individual whom he or she has harmed is not substantial. This issue of drug intoxication during conferencing was very present in the data with many of the participants admitting to being under the influence of a variety of substances during their conferences. This matter speaks directly to the research questions in this project as individuals who are intoxicated, even mildly, will find it much more difficult to benefit from the emotional exchange envisioned in restorative justice conferencing. The serious abuse of drugs and alcohol was a factor in the lives of all of the participants in groups two and three. Leaving aside the issue of being intoxicated on the actual day of conferencing, it is questionable how effective the practice of restorative justice can be with individuals who misuse substances. Emotional immaturity combined with the effects of substance misuse can mean that the chronic user experiences a limited range of emotional states, usually ranging from numbness to shame and rage (Marsh, 2011). These factors reduce the likelihood that the goal of inducing empathy and remorse will be achieved in any given conference. Indeed, for some of the young people interviewed for this research the requirement to express their thoughts and feelings at a conference, and to give an adequate explanation of why they committed the offence, was beyond their emotional and cognitive ability at that time.

As Maruna (2001) clearly illustrates, the mechanisms through which formerly persistent offenders desist from crime include profound rearrangement in the emotional and psychic make up of the person, that is, the creation of a new pro-social identity that both accounts for the offending past and leads to a hopeful crime free future. This shift in the individuals sense of self can be supported, and indeed triggered, by many factors including employment and stable relationships (Laub, & Sampson, 2003) , hitting 'rock bottom' through substance addiction (Marsh, 2011), space for reflection through isolation such as imprisonment, religious conversion, and sustained therapeutic intervention. Furthermore, crucial in the

desistance process is the role of mentors of many kinds who support the individuals quest for increased self-understanding and personal stability.

Some of the young people we interviewed had not yet decided on a coherent plan of action to build a productive future. While they were no longer offending and engaging in self-defeating behaviours, they spent a lot of time hanging around at home and were not engaged in employment or education. However, a consistent theme emerging from the interviews that are classified as being in group 3, is that they are very focused on being engaged in structured routine activities such as employment and education, and expressed a determined urgency about their wish to build a positive future and ‘knife off’ from anti-social acquaintances (Maruna & Roy, 2007). In other words, desistance for the more prolific offenders and drug users required a daily commitment to maintain their crime free status that was manifested in the ambition to make a good life for themselves and their dependents. The more persistent offenders in group three displayed patterns of self-defeating behaviours that were not present in the lives of the other young people in the sample. Their desistance is therefore necessarily partly a self-healing process (McNeill & Weaver, 2010), whether it be addiction recovery or mental health care.

## 6.5. References

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## 6.6. Appendices

### *Appendix 1: Request to participants*

Dear

Researchers at Queens University Belfast are currently carrying out a study of conferencing practices with young people who have participated in youth conferences through the Youth Justice Agency. The research is part of a wider project involving projects in Austria, Belgium and Northern Ireland. The overall goal of the work is to improve future practice by better understanding better how young people view restorative practices.

We would like to find out about what, if any, impact your participation in youth conferencing had on you. If you agree to take part in this research, you will be interviewed by a researcher for approximately one hour. The interview will be held at a time and location that is convenient for you, and is totally confidential. In return for your time there will be a small token of our appreciation, consisting of a £20 voucher.

Thanks sincerely

Brendan Marsh, Research Assistant

&

A handwritten signature in black ink, appearing to read 'Shadd Maruna', with a long horizontal line extending to the right.

Shadd Maruna, Ph.D.

Professor of Justice Studies and Human Development

Director, Institute of Criminology and Criminal Justice

## **Informed Consent Form**

### ***Desistance and Restorative Justice***

***This consent form explains the purposes behind this study and your rights as a participant (if you agree to take part). Please feel free to ask any questions about the study before giving your consent.***

This research has been designed by the European Forum for Restorative Justice, and is being carried out in three countries: Northern Ireland, Austria and Belgium. In Northern Ireland, the research team from Queens University will seek to interview young people who have been through a Restorative Justice process about their life experience before, during and after their involvement with Restorative Justice. The interviews will ask about your background before the conferencing, your experience and memory of the conference process, and about your life since then. The final outcome of the research is to improve Restorative Justice practices by producing a report and a practice guide that highlights the views of young people and adults who have been through the process but are no longer under the supervision of criminal justice agencies.

With your agreement, these interviews will be recorded so that we can analyse the different points that are made, to see where there are views in common. Only the research team will have access to these recordings and they will be deleted as soon as we are able to transcribe the information into print. The typed transcript will be kept strictly **confidential** on password protected computer files, and your name or other identifying information will not appear on the transcript. We will not report any of your responses to the Youth Justice Agency, nor to anyone else outside of the research team, except in the circumstance that you have told us about plans to commit self-harm or suicide, or else plans to cause serious physical harm to a child or an identifiable individual.

Agreement to take part in this study is **voluntary**. There is no reward for participating and obviously no penalty if you choose not to, however there is a small gratuity for participation. You are free to end the interview at any time you like, and you do not have to answer any of the questions that you are uncomfortable with.

Your participation will be strictly **anonymous**. We hope to publish our findings in a professional report and in later academic journals. However, your name or other personally identifying characteristics will never be mentioned in any such report that emerges from this research.

Please retain a copy of this form listing your rights as a participant in this research. If you decide at any point to withdraw your participation, please contact Shadd Maruna at [s.maruna@qub.ac.uk](mailto:s.maruna@qub.ac.uk), or Brendan Marsh at [bmarsh@qub.ac.uk](mailto:bmarsh@qub.ac.uk) and your data will be deleted in all its forms and no content will be used. If you are willing to take part in this study, please sign below. Thank you sincerely for your help.

I understand the purpose of the research and am willing to provide information for the research through interviews and discussion for the purpose of the research.

Name

Date

Signature

*Appendix 3: Interview questions (English)*

**Restorative Justice**

*Conferences...*

How many conferences did you participate in?

What was the situation that led you to be involved in RJ? (offences)

In each conference, who were the other participants? (victim, family, police, etc)

What was the experience of the conference like for you? What is your memory of it?

Was there anything in the conference that you liked or thought worked well?

Was there anything in the conference that you didn't like or thought didn't work well?

What would have made your conferences better?

*Reparation*

What kind of reparation plans did you agree to?

Did you have more than one plan to fulfil at any one time?

Did you find completing the reparation plan difficult?

What was your view of the plan at the time? Did you think it was fair?

How did you get along with staff at the time of your conference or during your reparation period?

*Views on RJ*

Bases on your experience with restorative justice...

-do you think it was a good way for the police to address your offences? Why?

-was there anything you believe you really benefitted from?

-what is your overall view or opinion of restorative justice?

Do you think it is a good idea or practice for people who have offended to...

-face victims

-admit guilt in the presence of others and apologise

-agree to repair the harm caused

Has restorative justice taught you any lessons that you have been able to use in your life?

If you had some advice for a young person before they went to an RJ conference, what would it be?

### **Desistance**

Has your life changed much since you finished your involvement with RJ?

Why did you decide to change how you live? Why did you make that decision?

What has been the most difficult aspect of turning your life around?

What has been the most enjoyable (best part) aspect of living according to your new values?

Specifically, over the last 2 years, have there been changes in your...

-employment

-education

-housing/accommodation

-sports/recreation

In regards to your family and other close relationships...

-have there been changes over the last 2 years? For better or worse?

-do you have the same circle of friends or have you moved on?



-how, and with whom, do you socialise these days?

Is there anything, or anyone, that has inspired you over the last few years?

Are there any people/groups/organisations that have been supportive in helping you stay on track? (family, 12 step, church, sport clubs, etc)

How do you now view your past offending? What thoughts or feeling arise when you think back to that period of your life?

When you see, or hear of, others committing crimes similar to your own past, what's your view on why they do it? Do you think they cause harm? What do you think it would take for them to change?

Was alcohol and/or drugs a factor in your offending? If so, how have you addressed your use of these substances?

What keeps you motivated to lead a good life? Whats important to you now?

What are your priorities for the future? What do you hope to achieve?

### **Self Report**

Have you been tempted to offend in the last few years?

Have there been any situations where it was difficult to not react with old behaviours, such as if you felt threatened or were tempted to steal?

How did you cope with these situations? What did you do instead?

Have you committed any offences over the last few years?

*Appendix 4: Interview questions (Irish)*

**Ceartas Aisiríoch**

Comhdhálacha ...

Cé mhéad comhdhálacha a rinne tú páirt a ghlacadh i?

Cad a bhí an scéal a thug tú a bheith páirteach i RJ? (Cionta)

I ngach chomhdháil, a bhí na rannpháirtithe eile? (Íospartach, teaghlach, póilíní, srl)

Cad a bhí an taithí na comhdhála mhaith ar do shon? Cad é do chuimhne é?

An raibh aon rud sa chomhdháil go thaitin leat nó a d'oibrigh go maith shíl?

An raibh aon rud sa chomhdháil nach raibh tú mhaith nó nach raibh shíl ag obair go maith?

Cad a rinne do comhdhálacha níos fearr?

Cúiteamh ...

Cén cineál cúiteamh pleananna raibh tú aontú?

An raibh tú níos mó ná aon phlean amháin a chomhlíonadh ag aon am amháin?

An raibh a fhaigheann tú a chríochnú an bplean cúiteamh deacair?

Cad é do dearcadh an phlean ag an am? An raibh a cheapann tú go raibh sé cothrom?

Conas a fuair tú a fháil chomh maith leis an bhfoireann ag an am do chomhdháil nó le linn do thréimhse cúiteamh?

Tuairimí ar RJ ...

Boinn ar do thaithí le ceartas aisiríoch ...

-An cheapann tú go raibh sé ar bhealach maith do na póilíní chun aghaidh a thabhairt ar do cionta? Cén fáth?

a bhunú go bhfuil aon rud a chreideann tú tairbhe tú i ndáiríre as?

-Cad é do dearcadh foriomlán nó tuairim an cheartais aisiríoch?

An gcheapann tú go bhfuil sé ag smaoineamh maith nó cleachtas do dhaoine a bhfuil olc go ...

íospartaigh -face

ciontacht -admit i láthair daoine eile agus leithscéal a ghabháil

-agree a dheisiú ar an dochar a dhéantar

Ar deireadh ...

An bhfuil ceartas aisiríoch mhúin tú aon ceachtanna go bhfuil tú in ann úsáid a bhaint as i do shaol?

Má bhí tú roinnt comhairle do dhuine óg sula ndeachaigh siad chun comhdháil RJ, cad a bheadh sé a bheith?

## **Desistance**

Tá athrú ar do shaol i bhfad ó críochnaithe tú do rannpháirtíocht le RJ?

Cén fáth go raibh tú cinneadh a athrú ar conas tá cónaí ort? Cén fáth go raibh tú a dhéanamh ar an gcinneadh?

Cad a bhí ar an ghné is deacra de casadh do shaol timpeall?

Cad a bhí an chuid is mó taitneamhach (chuid is fearr) gné maireachtála de réir do luachanna nua?

Go sonrath, thar na 2 bhliain anuas, tá go athruithe a bhí i do ...

-obair

-Oideachas

-tithíocht / cóiríocht

-spoirt / caitheamh aimsire

I dtaca le do theaghlach agus caidreamh dlúth eile ...

-atá ann athruithe thar na 2 bhliain anuas? Le haghaidh níos fearr nó níos measa?

-An bhfuil an ciorcal céanna cairde nó tar éis bogadh tú ar?

-, agus lena, an bhfuil tú sóisialú na laethanta seo?

An bhfuil rud ar bith, nó duine ar bith, go bhfuil spreag tú thar na blianta beaga anuas?

An bhfuil aon daoine / grúpaí / eagraíochtaí a bhí tacúil i cuidiú leat fanacht ar rian ann?  
(Teaghlach, 12 céim, séipéal, clubanna spóirt, srl)

Conas is féidir leat féachaint anois do ciontú caite? Cad iad na smaointe nó ceint cinn nuair a cheapann tú ar ais go dtí an tréimhse sin de do shaol?

Nuair a fheiceann tú, nó a chloisteáil ar, coireanna cosúil le do anuas féin daoine eile a cion, cad do thuairim ar cén fáth a dhéanann siad é? An gceapann tú a chur faoi deara siad dochar? Cad a cheapann tú a bheadh sé dóibh a athrú?

An raibh alcól agus / nó drugaí ina fhachtóir i do ciontú? Má tá, conas a bhfuil tú aghaidh ar do úsáid na substaintí?

Cad gcoinníonn tú spreagtha chun saol maith? Whats tábhachtach a thabhairt duit anois?

Cad iad do thosaíochtaí don todhcháí? Cad a súil agat a bhaint amach?

### **Féin Tuarascáil**

An bhfuil tú ag tempted chun chiontaíonn i le cúpla bliain anuas?

An bhfuil raibh aon cásanna ina raibh sé deacair gan imoibríonn le iompraíochtaí d'aois, mar shampla má bhraith tú faoi bhagairt nó a bhí tempted a ghoid?

Conas a fuair tú dul i ngleic leis na cásanna? Cad a rinne tú ina ionad?

An bhfuil tiomanta tú aon chionta thar na blianta beaga anuas?

## Chapter 7 - Conclusions

Katrien Lauwaert

### 7.1. RJ is a potential trigger and/or a support for change

The findings presented in this research confirm that victim-offender mediation and conferencing, as practiced in Austrian, Belgium and Northern Ireland have the potential to influence desistance. Sometimes these restorative justice processes act as a trigger for change. More often they support a process which has already started or is well underway. This effect was not visible for all interviewees. Sometimes other factors had led to desistance and the experience of mediation or conference was seen as rather irrelevant from the desistance perspective. We found no evidence that the restorative justice process had blocked progress towards desistance or had made reoffending worse.

Almost always also other factors, besides the participation in RJ, were at play in people's lives that helped to encourage, initiate and sustain desistance from crime: support of family and friends, stable relationships, becoming a parent or the desire to be a good parent, fear of incarceration, the prospect of a lengthy jail term for those who had served short sentences in prison, getting alcohol and/or drug use under control, maturation, space for reflection in imprisonment, employment, religious conversion, helping others, and the support of mentors of many kinds.

The potential of RJ to *initiate* changes became in particular clear for juveniles with a limited offending history and a relatively normal life. Together with other factors, such as the confrontation with the incident and the extent of the harm done, the reaction of the police, the public prosecution and their parents, the mediation pushed some of the young persons to end their beginning criminal career.

More often the mediation acted as a *support* for a process of change. That is not totally surprising. RJ processes are voluntary and offenders have often admitted guilt or at least their role in the offence. They chose to participate in the restorative justice process and this suggests a certain openness to look into one's own behaviour and its effect on others. It is probable that at least a part of the participants were already considering desistance. This is certainly the case in RJ programmes in which the parties themselves request the mediation.

For some participants the mediation or conference had been an important and/or necessary step in the desistance process. For others it was one (small) element in a chain of events; this was particularly so for people heavily involved in crime over a longer period in their life.

Juveniles in Northern Ireland with more persistent patterns of offending attended sometimes many conferences over a number of years. This had a cumulative effect for some. In other words, they faced many victims in many conferences and slowly they began to develop the realisation of the harm their actions had caused. It also happened that after a number of conferences which did not seem to affect the young persons at all, one particular conference did trigger a start for reflection. Interviewees stated that another criminal justice intervention would not have produced the same effect. RJ planted a small seed for change.

The way in which the restorative justice process influences people's desistance journey can be quite unpredictable. Sometimes the offender hopes it will be a support and that is how it works out: he receives respect from the victim, has the opportunity to answer questions or is able to financially compensate. These actions help to turn the page and build something new. However, some participants expressed that they hoped to communicate with the victim, but the victim refused to meet face to face or only wanted to make a financial agreement through indirect mediation. These participants were strongly disappointed about this missed opportunity. In still other cases there is no expectation of an impact on the process of change, but unexpectedly that is exactly what happens.

## **7.2. Factors supporting desistance**

The research uncovered a number of recurring factors, mechanisms or dynamics in restorative justice practices supporting positive subjective and social changes that help initiate or maintain desistance from crime. However, every desistance account is highly individual and therefore no generalisations should be made. While certain elements were helpful for some desisters, they were not for others and vice versa.

### *Creating an atmosphere of openness and respect*

A first group of factors, which were highlighted in the three regions, created the right context. Participants stated that without this atmosphere, the restorative justice process would not have had the effects we will summarise further on. The non-judgmental attitude of the mediator and the Youth Justice staff, their openness, their willingness to listen and to not label the participants as criminals, stimulated offenders to prove they were better than that and it

strengthened the positive sides of their identities. The respect received from the mediator/facilitator and from others present in the meeting was repeatedly mentioned. Being respectful towards each other may seem a normal expectation. The frequent reference made to it indicates however that for many participants this was different from many other situations they had been in and how important this positive experience was.

The open and respectful attitude of the mediator facilitated an open communication. Participants stated that only in the constructive spirit that was created it was possible to really take up responsibility. Participants felt they could speak freely and that they felt safe to explain their whole story to the mediator, that they could 'play cards on the table' and bring up their own truth, the 'truth only they and no one else knows and which is different from the judicial truth'.

#### *Tailoring the process to the needs of the parties*

To know what might best fit an individual journey out of crime, it works better to listen to the offender concerned, than to impose plans the professionals think are best. That is a lesson we learned from desistance research. The more interventions are crafted to suit the needs and social context of the person, the more successful they will be. This knowledge fits very well with the restorative justice processes the participants were involved in, although the flexibility to tailor the process to the individual needs of the offender varied. In Belgium the flexibility is at its maximum. Offenders can request mediation themselves (whenever they think it can be useful), at any stage of the criminal procedure. The mediation will be about what the parties bring to the table. There are no predefined goals. The minimum requirement is that the parties are open to listen to the other party's expectations. In Austria the framework is somewhat more defined. The mediation focuses on conflict resolution and reparation. The goal is to clear out all aspects of a case, be it personal, emotional and material. Within this framework, the parties fill in what is relevant. In Northern Ireland, the RJ process, although voluntary, takes more the form of a measure than a real offer and the flexibility concerns mostly the content of the exchange between the parties and the reparation plan, in which the rehabilitative elements are tailored to the individual needs and the social characteristics of the young person.

### *Communication with the victim*

The confrontation with the victim's story was a dominant element in terms of impact on change. Many participants spoke of the difficulty they had with facing the victims; the anxiety they experienced pre-mediation and pre-conference. Facing the situation of the victim, but also the attitude of the victim, frequently impressed. The fact that the offender was able to explain things, that he could apologise and express his regrets or that he had the chance to show that he had changed since the offence, had been equally helpful. Although it seems that the impact of the communication with the victim was more intense when there was a face-to-face meeting, there were also cases in which the indirect communication with the victim produced similar effects.

The impact of the meeting with the victim was described in different ways. The meeting enabled some participants to change their perspective and to develop empathy with the victim. The real impact of their behaviour became clear and tangible. Several participants stated the meeting 'took away a weight', that it was a psychological help, a real relief; that after meeting the victim they had felt courageous and proud, that it helped to turn the page or that it had been a wake-up call.

### *Reparation plans and the relation with the social worker who guides implementation of the reparation plan*

The reparation plan which is agreed upon during the conference meeting, was a typical element of the practice researched in Northern Ireland. The victim-offender practices in Belgium and Austria did not include such component, at least not as a systematic part of the process. In Northern Ireland, suitable rehabilitation options were identified before the actual conference, based on preparatory talks with the youngster, and the knowledge the professionals have about the services and programmes available. A member of staff of the Youth Justice Agency was assigned with supporting and overseeing the completion of the agreed reparation plan. One of the strongest outcomes of the interviews there was the appreciation for the relationship the youngsters were able to develop with the Youth Justice worker as well as for the ethos and humanising response they received from the Youth Justice Agency as a whole. The staff there provided a welcoming, supportive environment and sought to advocate for young people, educate young people and hold them to account.



Also in Northern Ireland, *persistent* young offenders benefited little or not from the confrontation with the victim. They did profit, however, from the rehabilitative components of the reparation plan. Appreciated components were for example the return to school or training programmes, participating in some form of emotional and psychological treatment and referrals to drug and alcohol counselling services. The latter were in most cases suggested by victims who wanted the young person to sort out their substance misuse problems. Only a minority of the persistent young offenders interviewed were ready to cease their offending behaviour and took the opportunity that the rehabilitative elements of their reparation plan provided. The more common outcome tended to be a process of cumulative learning through attendance at counselling or personal development work with staff from the Youth Justice Agency. Community service included in the reparation plan was often viewed as punishment and the reparative intent towards the community was not appreciated.

#### *Financial reparation*

In Belgium the financial reparation the participants paid to their victim(s) came in a few narratives to the fore, but in quite different ways. For people with a small income, paying a monthly sum over a long period of time to the victim was a real burden, a situation they never wanted to be in again. Others saw the financial reparation as a manner to make their feelings of guilt and regret visible and to work with these emotions. Another approach was very rational. The financial reparation was a way of taking responsibility for the collateral damage of a chosen criminal career and this provided peace of mind.

### **7.3. How were these factors helpful for desistance?**

#### *Dealing with emotions of shame, blame, guilt and culpability*

Early desisters who want to start a different life have to deal with difficult emotions such as shame, blame, guilt and culpability. The interviews confirm that RJ processes can provide a forum to deal with these emotions. Moral emotions such as guilt, shame, embarrassment and regret were in some way present in a good number of narratives. Interviewees stated they felt bad, guilty, ashamed about what happened and that they hoped that the participation in the mediation would allow them to apologise, and to feel better and/or to be forgiven for what they did. When this initiative led to direct or indirect communication with the victim about these emotions, this was described in various ways as (very) helpful.

In a few cases communication with the victim about these emotions was not possible, or stayed one way, either because contact with the victim was forbidden by the judge or because the victim did not reply to the letter of apology, and the exchange was limited to a financial arrangement. That was disappointing. Sometimes it was nevertheless helpful to write a letter to the victim.

### *Instilling hope*

Hope is vital for a person to be able to desist from crime. It provides strength and motivation. Having hope means having the desire to reach a goal, but also the perception that one is able to reach that goal and that one possesses the means to do so. It is about 'the will and the ways'. The social circumstances make it often difficult to have or keep this belief. Respected others can be hooks, who encourage, support and thus provide people with hope. When a person chooses to go through a restorative justice process, succeeds and gets there the respect of the mediator/facilitator and other participants and the support to move forward, this can provide hope.

### *Finding closure*

A restorative justice process provides an opportunity to close a period in life and to move forward. After a mediation or a conference, people sometimes feel they can finally start a new chapter in their lives. In terms of distance, the communication with the victim allows to knife off the past from the present.

### *Confirming the desister's pro-social identity*

Several participants saw the mediation as an occasion, or a platform to 'correct the image' the victim(s) might have had about them. By telling the victims their story, and their view on what happened during, and sometimes before and after the offence, they wanted to confirm the pro-social side of their identity. In several narratives it looked as if the offender called in the victim's help to undo the criminal justice label. Apparently it was important to them that the victim acknowledged that they were (also) something else than what the criminal justice label claimed.

### *Repairing relationships*

In Austria and especially in cases of domestic violence, an important function lies in the mediation's potential to re-establish a basis for communication. The mediation can be a first

step or a supportive element in repairing a damaged relationship. Special methods applied in domestic violence cases, such as working with two mediators of opposite sex in a setting called 'mixed double', have the potential of creating an atmosphere in which troubled couples may find a new start or way of communicating. This does not imply that the relationship is saved by all means, but rather that the (ex-)partners are supported in dealing with each other. Respondents explicitly stated that an indictment in court might have destroyed their (very successful) efforts to go straight. Instead, the mediation brought support and encouragement on their desistance journey that might have begun long before the mediation.

### *Preventing a criminal record*

In the Austrian situation, participants in victim-offender mediation rarely had a previous criminal lifestyle and were not typically persistent offenders. All these participants insisted that a major benefit of victim-offender mediation was the possibility to settle a conflict without being indicted as a criminal in court and without criminal record. The mediation was seen as a way to prevent labelling by the criminal justice system and to open a second chance. Clients became prudent and more reluctant to become involved in crime again.

Also in Northern Ireland, for some of the young people, avoiding the permanent stigma associated with a criminal record was of utmost importance. This factor made the conference experience a valuable and worthwhile event as it meant that they would not experience the practical difficulties that a criminal record can bring when pursuing work and career. Furthermore, and possibly more essential for their sense of self, was that the absence of a criminal record gave them the perceived freedom to start their lives again and to leave the stigma of the criminal offence in their past.

For some the conference did not have this positive connotation. They referred to the advantage of not going to court, but just as the lesser of two evils. They did not appreciate the pressure felt to accept full blame for their offences.

### *Supporting a decision for a leave or a conditional release from prison*

In Belgium, some participants had heard from other inmates or from prison staff that taking part in a mediation could influence positively the decision process for early release and this had been (one of) the motivation(s) to take part in the mediation. They saw the mediation as a practical way to work towards an early release which allowed them to execute a plan for reintegration. Indeed, although the stay in prison can be a trigger for reflection and

introspection, after a certain period of time it is perceived as counterproductive for building a new, crime-free life.

#### *Enhancing the norm*

Another important effect observed with occasional offenders in Austria was ‘the enhancement of the norm’, meaning that the official (police) reaction to the incident in combination with its settlement in victim-offender mediation set a clear red line to some offenders.

### **7.4. What may work against RJ influencing desistance?**

#### *Victimless conferences*

In Northern Ireland conferences where the actual victim of the offence was not present were not taken seriously by the young people. These conferences were experienced as a type of bureaucratic necessity where their offence was discussed and a victim representative lectured the young person on the possible effects of their crime. In that case the conference was viewed as irrelevant and the seriousness of the offence was diminished in the eyes of the young person: if the victim did not bother to show up, it was probably not very serious.

#### *Drug addicted offenders*

Some of the young Northern Irish people who were regular drug users and who had many conferences, had very little memory of their conferences and expressed the attitude that the actual conferences were irrelevant and quite forgettable. In fact a small number of participants who had this pattern of substance misuse expressed a serious lack of empathy for the victims of their crimes. This raises the question of the suitability, at least in a desistance perspective, of organising conferences for youngsters deeply entrenched in drug abuse. Individuals who are intoxicated, even mildly, will find it much more difficult to benefit from the emotional exchange in restorative justice conferencing. Emotional immaturity combined with the effects of substance misuse can mean that the chronic user experiences a only limited range of emotional states. The requirement to express their thoughts and feelings at a conference, and to give an adequate explanation of why they committed the offence, was beyond their emotional and cognitive ability at that time.

### *Persistent young offenders?*

The interviews carried out in Northern Ireland demonstrate that restorative justice conferencing had a positive outcome for young people who were involved in few offences. However, for those displaying a persistent pattern of offending, the central elements of restorative justice, that is meeting the victim, had a more limited effect. However, the persistent offenders did benefit from the rehabilitative effects of their reparation plans.

For the adult persistent offenders in Belgium, we did not find a similar outcome. This may be due to the different design of the RJ practices we researched in both countries. In Northern Ireland the conferences are almost in a systematic way offered to juvenile offenders and the choice is between doing a conference or going to court. As stated by some participants, the conference is then the lesser of two evils and a positive motivation for conferencing is not necessarily present. In Belgium, the offender himself requests the mediation, or he accepts a request for mediation by the victim. The mediation is an offer without direct impact on judicial decisions. This more open context may induce more motivated participants.

### **7.5. Final remarks**

Generally the data show that RJ models differ in the way they expose people to hooks for change. Reparation plans involving rehabilitative elements, for example, were highly appreciated as helpful for desistance or at least they had useful learning effects. Whereas these plans are a fixed part of conferencing, participants in victim-offender mediation made no reference to them. On the other hand, the relationship with the mediator/facilitator, important in mediation, was not highlighted at all by conferencing participants, for whom the relevant person was the staff who supervised the reparation plan.

Moreover, people in different stages of their path towards desistance could find elements in RJ that fitted their needs. People who were in a very early stage of desistance and who only started thinking about the morality of their behaviour were triggered into change by meeting the victim. Equally, some participants had travelled the desistance road to a large extent but still felt the need for a final step in which apologies could be presented or forgiveness could be asked from the victim, so that they could close that chapter of their life.

We learned that in terms of desistance young people profited a lot from the rehabilitative components of reparation plans such as the return to education, participation in some form of emotional and psychological treatment and referrals to drug and alcohol counselling services.

We cannot but think that this kind of support would also be very relevant to (young) adults who struggle with similar problems. One can understand that this more pedagogical approach is more naturally offered to youngsters as they are considered to be more malleable. Nevertheless, if conferencing is not offered to adults, an important potential for desistance is left aside.

Finally, we conclude that, as shown in the report with many examples, restorative justice processes, such as victim-offender mediation and conferences, can initiate and support desistance from crime, sometimes in an important and sometimes in a very humble way. For practitioners it is thus worthwhile to keep the hooks and obstacles for this process in mind in day-to-day work.